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PROCEEDINGS OF THE  
CONSTITUTIONAL CONFERENCE  
OF  
FEDERAL AND PROVINCIAL  
GOVERNMENTS

(SECOND SESSION)

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Quebec, September 25-28, 1950

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OTTAWA  
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.,  
KING'S PRINTER AND CONTROLLER OF STATIONERY  
1950





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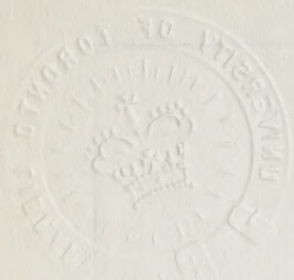
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## TABLE OF CONTENTS

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### VERBATIM REPORTS

#### First Meeting, Monday, September 25, 1950

|  | PAGE |
|--|------|
| Hon. Maurice Duplessis.....                  | 5    |
| Right Hon. L. S. St-Laurent, (Chairman)..... | 6    |
| Hon. Stuart S. Garson.....                   | 8    |
| Hon. Leslie M. Frost.....                    | 12   |
| Hon. Angus L. Macdonald.....                 | 18   |
| Hon. John B. McNair.....                     | 19   |
| Hon. Douglas L. Campbell.....                | 22   |
| Hon. Byron I. Johnson.....                   | 28   |
| Hon. J. Walter Jones.....                    | 29   |
| Hon. T. C. Douglas.....                      | 32   |
| Hon. E. C. Manning.....                      | 36   |
| Hon. Joseph R. Smallwood.....                | 39   |

#### Second Meeting, Tuesday, September 26, 1950

|                                  |    |
|----------------------------------|----|
| Right Hon. L. S. St-Laurent..... | 43 |
| Hon. Maurice Duplessis.....      | 44 |
| Hon. Leslie M. Frost.....        | 46 |
| Hon. Douglas L. Campbell.....    | 51 |
| Hon. Joseph R. Smallwood.....    | 51 |
| Hon. T. C. Douglas.....          | 52 |
| Hon. E. C. Manning.....          | 53 |

#### Third Meeting, Thursday, September 28, 1950

|                                  |    |
|----------------------------------|----|
| Right Hon. L. S. St-Laurent..... | 57 |
| Hon. Leslie M. Frost.....        | 58 |
| Hon. Angus L. Macdonald.....     | 59 |
| Hon. J. B. McNair.....           | 61 |
| Hon. Douglas L. Campbell.....    | 62 |
| Hon. Byron I. Johnson.....       | 63 |
| Hon. J. Walter Jones.....        | 64 |
| Hon. T. C. Douglas.....          | 64 |
| Hon. E. C. Manning.....          | 65 |
| Hon. Joseph R. Smallwood.....    | 66 |
| Hon. Maurice Duplessis.....      | 68 |

### APPENDICES

|  |     |
|--|-----|
| I. Translation of speeches delivered in French.....  | 71  |
| II. Federal and Provincial Representatives and Advisers.....   | 75  |
| III. Report of the Committee of Attorneys General.....   | 76  |
| IV. Briefs submitted by the Federal and Provincial Governments to the Committee<br>of Attorneys General prior to the meeting of August 21..... | 86  |
| V. Statement to the press (September 28, 1950).....  | 131 |

|            |     |
|------------|-----|
| INDEX..... | 133 |
|------------|-----|







# CONSTITUTIONAL CONFERENCE OF FEDERAL AND PROVINCIAL GOVERNMENTS

## SECOND SESSION LEGISLATIVE ASSEMBLY, QUEBEC

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### REPORT OF PROCEEDINGS

FIRST MEETING, MONDAY, September 25, 1950  
MORNING MEETING

The conference convened at 11 a.m., Right Hon. L. S. St. Laurent, Prime Minister of Canada, in the chair.

Le PRÉSIDENT (*Premier ministre du Canada*):—J'imagine, messieurs, que le premier ministre de Québec (M. Duplessis) voudra probablement ajouter à ses actes en prononçant quelques mots de bienvenue.

I imagine that the Premier of Quebec will want to say some words of welcome before we open this Conference.

Hon. MAURICE DUPLESSIS (*Premier ministre de Québec*): Monsieur le premier ministre du Canada, MM. les premiers ministres des provinces, MM. les délégués, il convient, je crois, que mes premières paroles et que mes premiers mots de bienvenue soient exprimés dans la langue française; c'est ce que je fais. D'autre part, la courtoisie traditionnelle de Québec rend approprié l'usage de la langue anglaise pour souhaiter la bienvenue aux délégués qui sont ici présents à cette mémorable conférence.

Mr. President, delegates and gentlemen, it is a real pleasure for the province and the government of Quebec to greet you all and to welcome you cordially to this ancient capital. As you all know, Quebec, one of the pioneer provinces, is the cradle of christian civilization on the North American continent. We have here very great traditions, both religious and national, that are deeply entrenched in the hearts and souls of our people. They are everlasting but they are never at a standstill.

The city of Quebec is built on the Quebec rock; it is full of significance. It draws attention to the solidity of our traditions and to our firm desire to co-operate sincerely and reasonably for the real prosperity of Canada as a whole and of every province in particular.

Quebec rock is named Cap Diamant or, in English, Cape Diamond because of the rock crystals that it contains. It indicates our desire to have a Canadian constitution crystal clear.

This is not the first conference which has taken place in Quebec city. Confederation was decided upon following meetings in Charlottetown and, secondly, in Quebec city in October 1864.

I venture to say that to-day's conference in Quebec is even more memorable. As a matter of fact, this is the first time that we have the honour of welcoming together at a conference on constitutional matters the Prime Minister of Canada and the Prime Ministers of every province in Canada.

The 1864 conference was presided over by a distinguished Canadian of French descent and it is a remarkable coincidence that the conference commencing today is also presided over by a distinguished Canadian of French descent. Needless to repeat that you are most cordially welcome here.



We hope that our labours will be fruitful and to this end we are glad and willing to co-operate.

May I be permitted to pray Divine Providence to crown our labours with success so that they may bring about greater prosperity for every province, for the whole country and for all its population.

Le PRÉSIDENT: Messieurs, la constitution du Canada permet l'usage de la langue française dans cette enceinte où nous tenons cette conférence, et il convenait certes que vous nous adressiez vos premières paroles de bienvenue dans la langue qui fut parlée dès l'origine de ce qui est maintenant la capitale de la province de Québec.

En mon nom personnel et au nom du gouvernement canadien, et, je suis sûr que je puis ajouter, au nom des gouvernements des neuf provinces autres que le Québec, nous tenons à vous exprimer notre appréciation la plus sincère à vous et à votre gouvernement pour votre courtoisie et votre hospitalité en nous invitant à tenir à Québec cette deuxième session de la conférence constitutionnelle. Personnellement je suis très fier qu'elle ait lieu dans la capitale de la province de Québec, où je suis né, et à laquelle j'ai toujours conservé un attachement que l'on doit à ce qui n'est peut-être pas une *petite* patrie, mais à ce qu'on est convenu d'appeler sa petite patrie.

Puisque l'on pose un précédent en tenant une conférence fédérale-provinciale ailleurs que dans la capitale nationale, je crois qu'il est très opportun que ce soit à Québec.

Le premier ministre de l'Ontario (M. Frost) me faisait remarquer que peut-être une telle conférence aurait pu avoir lieu à Orillia car Québec n'a que sept à huit ans de plus que sa ville natale, Orillia, dont la fondation remonte à 1615. Il y avait donc sept à huit ans en faveur de Québec, et voilà pourquoi nous y sommes.

We are conscious that we are dealing today with something fundamental. It is really the framework of law and convention upon which our brand of democracy and our freedom rest. You have said rightly, sir, that Quebec has a long and historic association with both the fabric of our constitution and the maintenance of freedom and democracy.

I think it is well for us to remind ourselves that it was the Quebec Act of 1774 that was the first document establishing the democratic freedoms which we have continued to enjoy. It was under that document that we of French origin and of the Catholic religion had recognized our right to hold and enjoy our freedoms in that regard, and were guaranteed the preservation of our civil laws. I think that the Quebec Act really became the foundation of freedom in Canada; and it certainly is the foundation of that loyalty of the Canadians of French origin to the British institutions which has flourished in this northern half of the North American continent.

You rightly pointed out, sir, that the second conference, the Quebec conference of 1864, completed the work that had been commenced at Charlottetown, and that it was here that were adopted those resolutions, the Quebec Resolutions, which were the very foundation of the British North America Act. The name of Quebec has constantly since been associated with the constitutional development of the Canadian nation.

Quebec has also been the scene of other great conferences concerned with the struggle for freedom. We do not forget that in 1943 and in 1944 the Quebec conferences were the occasion of the planning of the final effort that overcame the enemies which were such a threat at that time to democracy and freedom all over the world.

[Mr. Duplessis.]



The present constitutional conference is also being held at a time of crisis for all those who believe in freedom and democracy, and I think it is in keeping with the great meetings and historic documents of the past which also bear the name of Quebec. I think that the Quebec conference of 1950, though it may not have the honour of seeing completion of the constitutional structure in Canada, will make a significant contribution to the constitutional development of our country as the home of freedom and democracy. For these reasons I am sure we are all particularly glad of having this opportunity of working here together in this building.

In opening the second part of the constitutional conference, it might be useful to review briefly the background and the progress which have been accomplished so far. I think it is well for us constantly to remind ourselves that, though we have a great many things to do, for the time being we are concerned primarily about one important step, namely, an attempt to devise a method of amending our constitution here in Canada with the concurrence of all those who would be affected by such amendments as might be made.

In discussing the amendments which it might be found desirable to make afterwards we should try to find a method whereby we can ourselves, with the co-operation of all those who represent the people to be affected, make in our own country the changes which circumstances may from time to time require to be made. That, I think, is something about which we are all agreed. We are all agreed about the desirability of having a method whereby Canadians can themselves do whatever may be necessary, or whatever they think is necessary or advisable in the interests of Canadians, to their constitutional documents. I know that the Premier of Quebec and the Premier of New Brunswick, among others, feel that some day we will come to the point where we will want to write a new constitution, and have it written here in Canada either in the form of a treaty or some other Canadian document that will be in appearance as well as in effect a truly Canadian document. But I am afraid that that is something which we cannot attempt to accomplish immediately, and that for the time being we shall have to be content with devising some method whereby we can, without prejudicing any of the interests that require to be respected, make such amendments from time to time to our constitutional documents as circumstances may require.

If we do that with respect to the British North America Act it will be something that will also serve when we come to the point of writing our new constitution, because our new constitution will also require some provisions looking to the possibility of future amendments to it. And what we can agree upon with respect to the British North America Act will be so much accomplished that can be, in turn, incorporated in any new constitution. I think we will all agree with respect to that. We were all agreed when we first met, and it became apparent within the very first minutes of our first meeting. We were all agreed that there are certain fundamental rights which must be entrenched in such a way that they cannot be dealt with unless there is unanimity throughout the country as to the desirability of dealing with them. There is also another point upon which I think we all agreed. We all realistically appreciate that our federal form of national government and of provincial governments has to be respected not only in the letter of the constitution but in the working of the constitution.

I feel that at the present time we all think that way about it. This enormous country cannot be properly administered from one central spot. There are certain things which require the same form throughout the whole of the land from St. John's, Newfoundland, to Victoria, British Columbia, but there are certain other things which are special and regional, and I think that all serious-minded Canadians honestly want to have that system maintained in its entirety.

There are circumstances, of course, which bring about an appearance that such and such a change might be desirable, might work better. Some of us were concerned about unemployment insurance. We know that unemployment insurance, though it did require some change to bring it about, has proved to be beneficial, and that no one would now want to destroy that national system of unemployment insurance. There may be other things which would require to be dealt with in a similar way.

Our Minister of Finance is not here, but I know from my contacts with him that fiscal problems are extremely important. We all realize that all the responsibilities of government, whether it be of the federal government, the provincial governments, the municipal governments or of the school administrations, have to be provided for by the same ratepayer; and when one level of government takes from him a certain portion of what can be taken from him for public purposes, there is that much less left which can be taken from him by others for the discharge of other public responsibilities.

When we shall have achieved a method of amending our constitution I think there will be ample opportunity to use the instrument that shall have been devised in the interests of the Canadian nation, but we must not be too ambitious. I think we shall have to content ourselves to go as far as we can toward making an appropriate instrument that will enable us, by using it, to bring about such other changes as circumstances may require.

A great deal has been done already. When we met in January we found ourselves in agreement on the fundamentals. We set up a committee to classify all sections of the British North America Act in categories. Each one requires a different form of instrument for an amendment that would not prejudice any of the rights that have to be respected. This conference met and I understand that a report showing very substantial accomplishments has been prepared. The committee of the conference met and discussed *in camera*. A report has been prepared. We are now meeting in a public session. Perhaps one of the first things we shall have to decide is whether we want the report of the work that was done *in camera* brought to us in a public session or whether we would prefer to have it given to us in a private session. Probably in its general lines it is pretty well known, and it may be that we can receive it in this public session, and after looking at it then determine whether or not we would want to discuss it in the somewhat greater freedom that is enjoyed in an *in camera* session, or whether the substance of the report is such that we would feel no concern at discussing it in public.

Would you gentlemen care to express your views as to whether you would receive it in public or whether it should be received *in camera*?

Hon. MR. FROST: For myself, I think it should be received in public.

Hon. MR. DUPLESSIS: I think so, too.

The CHAIRMAN: Since no one offers any objection to it being received in public perhaps we may, as the first step, invite Mr. Garson, who I understand was chairman of that committee, to report on the work that committee has accomplished.

Hon. STUART S. GARSON (*Minister of Justice*): Mr. Chairman, Provincial Premiers and official delegates, perhaps it would be in order for me briefly to review the terms of the reference before reading the report. But before doing that even, as chairman of the committee, I should like to express our thanks to Prime Minister Duplessis for the invitation which he so kindly extended to us to have this conference here at the present time.

As he rightly said, Quebec is the cradle of civilization in North America, and it is also the site of some of the deliberations on Confederation itself. We

[Mr. St. Laurent.]



think it is peculiarly appropriate at this time that this conference should be held here, and we are sure that it will be equally successful.

The delegates will remember that on January 12 a Committee of Attorneys General recommended:

"That the provisions of the British North America Acts 1867-1949 and other constitutional acts be grouped under six heads, namely:

(1) Provisions which concern parliament only."

The amendment of those provisions should be made by an Act of the parliament of Canada only, according to the recommendation of the committee.

"(2) Provisions which concern the provincial legislatures only."

The committee recommended that they should be made by an Act of the provincial legislatures.

"(3) Provisions which concern parliament and one or more but not all of the provincial legislatures."

The committee's recommendation as to that was that provision should be made for an amendment by an Act of the Parliament of Canada and an Act of the legislature of each of the provinces affected.

"(4) Provisions which concern parliament and all of the provincial legislatures."

As to that the committee recommended that an amendment should be made by an Act of the Parliament of Canada and Acts of such majority of the legislatures and upon such additional conditions, if any, as may be decided upon.

"(5) Provisions concerning fundamental rights (as, for instance but without restriction, education, language, solemnization of marriage, administration of justice, provincial property in lands, mines and other natural resources) and the amendment of the amending procedure."

With regard to that the committee recommended that amendments should be made by an Act of the parliament of Canada and Acts of the legislatures of all of the provinces.

The last Classification was:

"(6) Provisions which should be repealed."

When this report was received by the plenary session, as the delegates present will recall, a unanimous report was unanimously received by the conference which then proceeded to set up a standing committee of the provincial attorneys general and myself as chairman, in a resolution which read as follows:

"Resolved that this conference agree to:

- (1) The appointment of a standing committee representative of the federal government and the provincial governments, of which the Attorney General of Canada shall act as chairman.
- (2) Presentation to the committee, with the least possible delay, by the federal government and the provincial governments of their views respecting the classification of each section of the B.N.A. Act, 1867, as amended, and all other constitutional acts of the United Kingdom parliament or other constitutional documents relating to Canada.
- (3) The standing committee shall use its best efforts to harmonize the views of the federal government and the provincial governments.
- (4) The committee shall, as soon as possible, report to the federal government and the provincial governments the result of its work.
- (5) The conference shall then re-assemble to determine finally the amending procedure to be recommended to the several legislative bodies concerned."

It is under that resolution, containing those terms of reference, that the Committee of the Attorneys General has met, has considered its responsibilities and reports as follows:

**"Report of the Committee of Attorneys General to the Constitutional Conference of the Federal and Provincial Governments"**

Your committee reports as follows:

- (1) That at the conclusion of the plenary session of the Constitutional Conference of the Federal and Provincial Governments, January 12, 1950, the Committee of Attorneys General authorized a sub-committee consisting of the Honourable S. Garson, the Honourable M. Duplessis, K.C., and the Honourable Dana Porter, K.C., to appoint a secretariat. This sub-committee accordingly unanimously appointed as Joint Secretaries, J. F. MacNeill and L. Paré.
- (2) That after discussion by long distance telephone the Attorneys General unanimously concurred in recommending the following procedure to the members of the Continuing Committee:
  - (a) that the briefs of all governments be forwarded to the Joint Secretaries as soon as such briefs were completed;
  - (b) that as soon as the brief of each government was received in the Secretary's office, but not before, the Secretary would forward to such government a copy, in quadruplicate, of all briefs of other governments which had been previously filed with the Secretary and would also forward as soon as possible a copy in quadruplicate of the briefs of other governments thereafter filed as soon as they became available;
  - (c) that the Federal Government should file its brief and be entitled to copies of the briefs of other governments on the same basis as each of the provincial governments.
- (3) That briefs of all governments were filed with the Secretaries and distributed on or before July 24, 1950. Copies are available for use of the plenary conference.
- (4) That compilation of the classification of sections submitted was prepared and the Committee met August 21, 1950, to carry out the instruction of the conference.
- (5) That from the briefs submitted it was found that there was a large measure of agreement as to the categories in which the following sections of the B.N.A. Act should be placed: 1, 4, 6, 7, 11, 13, 14, 15, 18, 19, 24, 30, 32, 33, 34, 35, 36, 38, 39, 44, 45, 46, 47, 48, 49, 53, 54, 93, 98, 103, 105, 106, 114, 115, 116 and 124. The final classification of these sections is set out in Appendix 1.
- (6) After a frank and full discussion the sections—other than those listed in Appendix 1—were disposed of as set out in Appendices 2 and 3.
- (7) That in accordance with instructions of the Conference the Committee fixed the date for the re-assembling of the Conference as September 25, 1950, at Quebec.
- (8) That appended hereto is a list of those who took part in the Conference. Conference. (Appendix 4)

Respectfully submitted,

S. GARSON."

If I may, I should like to indicate what is perhaps fairly self-evident. With respect to all of the quite large number of sections in appendices 1 and 2 the committee were able to reach virtually unanimous agreement. With respect to the forty-five sections in appendix 3 upon which it was not possible to secure unanimous agreement, the committee accordingly recommends that further

[Mr. Garson.]



consideration be given to them at this conference. As will be seen by the footnote, four of these sections stand pending the decision of the conference on the advisability of drafting a uniform section on the constitution of the legislatures, providing for a yearly session thereof, and for the duration of the legislatures.

Then, another seven, namely, 100, 108, 109, 117, 121, 123 and 125, are sections with respect to which there appeared to be quite a substantial measure of agreement. Then I think it is fair to say that in the committee there were some sections which the attorneys general did not feel that they could commit themselves on without consultation with their governments, but as to which it might be reasonably hoped that, with the heads of the government present here, we might be able to resolve the disagreement concerning them. Out of the 140 odd sections of the Act I would think that leaves something of the order of approximately 30 sections which represent the more difficult ones upon which to reach agreement.

The CHAIRMAN: I understand the delegates attending the conference have been supplied with mimeographed copies of this report. Would it be agreeable to you gentlemen that they now be made available to the press?

Hon. Mr. DOUGLAS: Agreed.

Hon. Mr. DUPLESSIS: The briefs will be made public?

Hon. Mr. GARSON: The reference in the report is to the effect that the briefs are available, and I am sure there will be no objection, so far as anyone is concerned, that they be made public.

The CHAIRMAN: That will apply to communicating them to the press if they request them.

Hon. Mr. DUPLESSIS: Yes.

The CHAIRMAN: Although the number of sections with respect to which unanimous consent has not been achieved is not very large, as Mr. Garson has pointed out they represent the difficult matters with which we have to wrestle at this conference. I understand that some of them have to do with the organization of parliament and the organization of the legislatures. Probably they might be allowed to stand until we have dealt with that which is perhaps really more urgent, that is to say, the question as to whether there can be made, without prejudicing any of the rights that have to be fully respected, any progress towards devising a formula for making such amendments as would in effect have the consequence of enlarging some jurisdiction and restricting some other jurisdiction.

With respect to the organization of parliament and of the legislatures I think there might not be too great difficulty in finding formulas which would secure the proper organization of those institutions. I think that everyone is pretty well satisfied with the constitutional guarantees which now surround both the democratic form of parliament and the democratic form of the legislatures. It might not be difficult to write the kind of formula that would carry out our desire to see that these democratic forms of our representative institutions cannot be tampered with by any temporary majority, and that there will be nothing done which might affect them without almost unanimous consent after careful consideration by all those who have these public responsibilities.

Hon. MAURICE DUPLESSIS (*Premier ministre de Québec*): Inutile de répéter les déclarations que j'ai faites à Ottawa lors des premières séances de cette importante conférence au mois de janvier 1950.

Nous voulons simplement réitérer notre sincère désir de coopérer loyalement et amicalement à l'élaboration et à la mise en application d'une constitution essentiellement canadienne, qui réponde à la situation.

Nous avons franchi la période de tutelle et atteint notre majorité. Il me semble que le temps est arrivé d'avoir une constitution essentiellement canadienne, faite au Canada, par des Canadiens et pour les Canadiens. Je crois que nos efforts devraient être dirigés dans ce sens là.

Mr. Chairman, the several briefs have been made public and I do not wish to repeat what the Province of Quebec has stated already in its brief. It seems to us that our brief is clear. The works we are called upon to perform are of paramount and vital importance. The conference now taking place in Quebec is assuredly, to my humble way of thinking, the most important that ever took place in Quebec, at least on constitutional matters. We have been discussing methods, ways and means of amending our constitution. Canada today is of age and so are the provinces. Most assuredly the province of Quebec achieved its majority a long time ago. To us that fact should be effectively recognized and we should act accordingly.

We in Quebec would like a brand new constitution. Otherwise we would only be doing more or less patchwork. In view of the more complete and appropriate work necessary, why not start that work right away? It seems to us that by starting right away to build up a new Canadian constitution, based on the fundamentals that, so far as Quebec is concerned, are mentioned in our brief, we would forge ahead, and we would be taking a stand more in line with the new status of Canada and of the provinces.

The situation of today calls for more than decision based on shreds or patches. We realise that the building of a new constitution is a work that cannot be done overnight. We think that the work already achieved is helpful, but if we continue a discussion of the patches and the shreds and forget the essential, we would not, in my humble way of thinking, be accomplishing the work that can and should be accomplished.

Let us try to build a new Canadian constitution right away. Let us secure from London, from Westminster, an official declaration that Canada and the provinces are free to have their own essentially Canadian constitution made in Canada by Canadians and for Canadians. The sooner this is done the better. There is an amendment adopted by the Canadian parliament in 1949, that I do not wish to discuss further now, and by which the British parliament appears to have granted to Ottawa the power to amend the Canadian constitution in so-called federal matters. Why not immediately and without any additional delay have London recognize our rights to an essentially Canadian constitution? I fail to see why this power should be recognized to Ottawa alone in so-called federal matters.

Furthermore, it would seem illogical to ask London to accept certain definite amendments. It would not then be an essentially Canadian constitution made in Canada, for Canadians and by Canadians. Let us have the British parliament recognize our absolute freedom and our absolute right to enact here, and here alone, an essentially Canadian constitution.

Hon. LESLIE M. FROST (*Premier of Ontario*): Mr. Prime Minister and gentlemen, it is a pleasure for us to be here in Quebec for many reasons. However, there are two reasons that I think appeal to me personally. One of them you mentioned yourself in your introductory remarks. This morning when I looked out my window at the Chateau over the broad expanse of the St. Lawrence river, I saw in front of the hotel the statue of Champlain looking thoughtfully over this city. That took me back to my native county of Simcoe and my native town of Orillia where this morning another statue looks very thoughtfully over the waters of Lake Couchiching in my native county of Simcoe.

[Mr. Duplessis.]



That reminds me that after all the great founder of the city of Quebec, Champlain, who founded Quebec in 1608, I believe, found time in his busy life as an explorer not only to visit my native county of Simcoe but also to become really the first citizen of my native town of Orillia. He not only visited that country but he spent a winter there. Why Champlain chose to spend the winter in that beautiful country one hardly knows. Why he did not spend the summertime there is perhaps something for us to ponder. In any event, he spent several months in that locality. Therefore when I come to Quebec I feel at home when I see the monument of the great Canadian, who not only founded the historic city of Quebec 342 years ago but also visited and became the first citizen of a very important part of the province of Ontario. After all, I am a Huronian, and in the county there is one of the oldest, if not the oldest, known ruin in America placed there by the hands of the white man. I refer to old Fort St. Marie near Midland where three years ago I had the honour, on behalf of the Jesuit Fathers, of laying the cornerstone for the reconstructed fort. It is fine to have that connection with this ancient city of Quebec, and I may say to my friend Mr. Duplessis, that when you look at history, we are not so young in Ontario after all. Through that country went Brûlé, LaSalle, Champlain and many others; that country dates back to the early days as does this historic city of Quebec.

There is another reason which I think will appeal to all Canadians: the fact that here eighty-six years ago the men that have become known as the Fathers of Confederation met and formulated the proposals which afterwards were in large measure placed in the B.N.A. Act. It is true that there were subsequent conferences, but I think, nevertheless, the basic resolutions of 1864 were very largely the basis of the act of three years later, in 1867.

Standing at this distance from the achievements of those men we cannot but be impressed by the magnitude of what they accomplished. After all, here today we are dealing with a section of their work. They dealt with a very much broader subject and their success was really a remarkable achievement. I am sure, sir, that we are glad that the Prime Minister of Quebec, Mr. Duplessis, has asked us back to this historic spot where we can get the spirit of the Fathers who drew up the original resolution upon which confederation was based and, in catching their spirit, undoubtedly we can find solutions to the problems we are meeting here today to solve.

Now, Mr. Prime Minister, we in Ontario have given a great deal of consideration to the deliberations of this conference, starting as it did last January, together with the work of the committee of attorneys general. My colleague Mr. Porter and myself, with other colleagues of government, have deliberated over the findings as expressed in the report which has been tabled here today and made public. Perhaps I might be permitted to express our views as to what we think might be done at this stage.

I might just briefly again trace what you have already said and what Mr. Garson has said about the proceedings which have taken place. On the tenth of January last this conference met in Ottawa to find the answer to two questions: First, should we have power in Canada to amend our own constitution in respect of matters which are of concern to the provincial and federal authorities? And the second question was: If so, by what method?

At the conference last January the first question was answered affirmatively. The Prime Minister has correctly stated the attitude of the conference at that time. The conference was unanimous in its view that we should have power in Canada to amend our own constitution. At that time the answer to the second question—if so, by what method?—was also considered. May I be pardoned, sir, for repeating some of the things said here this morning. Discussions were

held and the question was referred to the committee composed of the provincial and federal attorneys general who were asked to give the problem detailed consideration.

Two days later on the twelfth of January this committee reported in the following terms, to which Mr. Garson has referred:

"1. That the provisions of the British North America Acts 1867-1949 and other constitutional acts be grouped under six heads, namely:

- (1) Provisions which concern parliament only.
- (2) Provisions which concern the provincial legislatures only.
- (3) Provisions which concern parliament and one or more but not all of the provincial legislatures.
- (4) Provisions which concern parliament and all of the provincial legislatures.

(5) Provisions concerning fundamental rights (as for instance but without restriction, education, language, solemnization of marriage, administration of justice, provincial property in lands, mines and other natural resources) and the amendment of the amending procedures.

(6) Provisions which should be repealed.

2. That in respect of group (1) amendment shall be made by an Act of the parliament of Canada.

3. That in respect of group (2) amendment shall be made by an Act of the provincial legislature.

4. That in respect of group (3) provision be made for amendment by an Act of the parliament of Canada and an Act of the legislatures of each of the provinces affected.

5. That in respect of group (4) provision be made for amendment by an Act of the parliament of Canada and Acts of such majority of the legislatures and upon such additional conditions, if any, as may be decided upon.

6. That in respect of group (5) provision be made for amendment by an Act of the parliament of Canada and Acts of the legislatures of all the provinces.

7. It is recommended that the process of amendment in respect of categories (3) to (6) inclusive of paragraph 1 be capable of being initiated by one or more of the provincial legislatures or by the parliament of Canada."

Now on the same day, the Conference gave the report of the committee full consideration and the following action was taken: It was resolved that the conference agree to:

(1) The appointment of a standing committee representative of the federal government and the provincial governments.

(2) Presentation to this committee with the least possible delay by the federal government and the provincial governments of their views respecting classification of each section of the B.N.A. Act, 1867, as amended, and all other constitutional acts of the United Kingdom parliament or other constitutional documents relating to Canada.

(3) The standing committee shall use its best efforts to harmonize the views of the federal government and the provincial governments.

(4) The committee shall, as soon as possible, report to the federal government and the provincial governments the results of its work.

(5) The conference shall then reassemble—as we are today—to determine the final amending procedure to be recommended to the several legislative bodies concerned.

In due course presentations of their respective views were submitted by the federal and provincial governments and the standing committee met in Ottawa on 21st August, 1950. Quite apparently this standing committee has given most careful consideration to the problems referred to it, and its report under date 23rd August, 1950, is now before us.

[Mr. Frost.]



The standing committee examined the British North America Act, 1867, as amended, and the other constitutional documents relating to Canada, section by section, and in brief form have reported to us this morning the following:

(1) The classification of a number of the sections was agreed upon unanimously by the federal and provincial governments in their submissions to the committee.

(2) The classification of a further number of the sections was agreed upon by the standing committee in its meetings.

(3) Agreement was not reached by the standing committee upon the classification of a remaining number of sections. Those sections, Mr. Prime Minister, are of course very important sections.

It is in relation to this last mentioned group of sections and subject matters upon which the standing committee did not reach agreement with respect to classification that our problem, it seems to me, lies. The work of the committee emphasizes the difficulty of any conference arriving at unanimity of agreement as to the scope and extent of federal and provincial matters. The work of the committee also emphasizes the difficulty in reaching agreement that the powers as contained in various sections of the constitution should be placed under specific headings. Now, Mr. Prime Minister, I think that is quite natural; I am not dismayed that it is the case. I think it is natural that such should be the case when we look at the history of things following 1867. Many sections of the B.N.A. Act have been subjected to interpretation by the courts during the last eighty-three years and there are still many doubts and differences of points of view. I think that at the present time there is a reference to the courts in relation to *margarine*. There is doubt in regard to the meaning of the constitution in respect thereto, and it has been referred to the courts. It occurs to me that another important matter is in connection with inter-provincial truck hauling and traffic. The matter is before the courts, having arisen out of a case down in New Brunswick. These things merely show that even after eighty-three years there are still points of doubt and differences of points of view. This would continue to be the case if the power of amendment were to remain as it is now, with the British parliament. This conference has already decided that there should be the power in Canada to make amendments to the constitution if the need should arise. It is most desirable that the method of making amendment should be determined by this conference and it is sincerely hoped and I am satisfied that it will be.

If we decide on a method of making amendment, doubts and differences of points of view should be determined by the courts upon the same principle as interpretations of the Act are now determined by the courts.

It is well to remember that the purpose of this conference is not to discuss any particular amendments or proposed amendments to the constitution but is to examine whether we should have the power in Canada to amend our constitution and if so, by what method.

As a basis for discussion, and in no sense in a dogmatic way, I can assure you, we would like to make a suggestion. If this conference feels that it can determine and place the various sections of the B.N.A. Act under particular headings—if it can do that—we would indeed be very happy. But we feel this: In view of the past and in view of the fact that there are many uncertainties arising out of the original Act as it was drafted, based upon resolutions drawn in this very city, no attempt should be made by this conference to allot any particular sections or subject matters to any particular classification, but that this conference should adopt a formula of method of amendment and leave it to subsequent agreement among the governments concerned as occasions arise, or upon any failure of agreement, to the courts to determine

under what heading any particular section or subject matter should be placed. That having been decided, the particular method of agreement would be defined by the formula.

If we decide that matters coming wholly within the jurisdiction of the parliament of Canada should be amended by the parliament of Canada without reference to the provinces, then that would be the principle contained in the formula. The parliament of Canada might say that a certain section was wholly within the competence of the jurisdiction of the parliament of Canada, and there might be some disagreement. A province might say: "No, we think we have an interest in that section." If there is disagreement let the matter be referred to the courts to determine whether it is wholly within the power of the parliament of Canada. The adoption of this method would leave the interpretation of our constitution to the courts as is now the case.

This conference should determine now the method by which amendments should be made. If amendment is desired by the parliament of Canada or by any of the provinces and a difference of opinion arose as to the class within which any section or subject matter should fall, then the courts would decide the matter, if there was no agreement among the ten provinces and the federal government. The courts having determined or interpreted the classification of any particular subject matter as outlined in the proposed formula, then the method outlined in the formula would apply.

The difficulties incident to any other course are apparent. Over the years, since the passing of the B.N.A. Act, a host of decisions has been made by the courts. No doubt over the years many other interpretations will be necessary and may arise from sections and combinations of sections which are not contemplated at the present time. I mean to say that we may sit here today and say that a certain section falls within a certain heading. We may come to that conclusion here today, but actually, speaking later on, the court may place a different interpretation on it and say that the section, instead of falling under a particular head, should fall under another head or under two headings. We are here not to amend the constitution but to find ways of making amendments should the necessity or desire arise.

Many of the decisions of the past have arisen out of circumstances which were quite unexpected and this undoubtedly will be the case in the future. The Fathers of Confederation could not possibly have contemplated or anticipated the nature of the many problems of interpretation which were to arise; nor can we. They determined the rules and left it to the courts to apply them. Ontario proposes that in principle this should be the course which should now be adopted.

If the above proposal receives favourable consideration, then the matter of subsequent procedure should be considered. It might be well that the procedure followed at the last meeting of the conference in January should again be adopted. At that time a reference was made to a committee composed of the federal and provincial attorneys general. Each province would desire to submit what it considers to be the proper formula. The committee of attorneys general could consider the various proposals and see what could be done towards arriving at unanimity.

Speaking for Ontario, sir, we are prepared to submit a formula for discussion, either to a subcommittee of the attorneys general or to this conference—and I say quite frankly, preferably to the former, the subcommittee of the attorneys general, because then all of the submissions could be considered by the committee without priority for any province—they would be considered as suggestions advanced by all of the provinces at the same time. I should say that I would not wish there to be any mystery about what we think the formula might be. The formula we would submit would be along the lines of those which have been previously advanced. For instance the formula I

[Mr. Frost.]



mentioned in the statement I first read, which emanated from the committee of attorneys general in rough, would provide for the parliament of Canada to amend the constitution:

- (a) relating to the executive government of Canada and the constitution and procedure of the House of Commons and Senate. In other words, things that are purely dominion might be amended by the parliament of Canada.
- (b) where one or more but not all of the provinces are concerned, with the consent of the province or provinces concerned by provision relating to such province or provinces.

The next matter is very important and has been referred to by the Prime Minister and by Mr. Duplessis.

- (c) with the consent of all of the provinces, provisions which are fundamental.

I think the word "entrenched" has been used by the attorneys general.

- (d) with the consent of a proportion of the provinces having not less than an agreed percentage of the population any other provision of the constitution not covered by (a), (b) and (c).

That roughly is what we think the formula may be. It is not new. It has been discussed here and in the committee.

In conclusion, Mr. Prime Minister, it is most desirable that what was said at the opening of the conference on the 10th January last be emphasized. This proposal is not advanced in a dogmatic way. It is merely a proposal for discussion. It is advanced only as a basis for discussion and consideration. Ontario is open minded on this subject and is prepared to discuss and consider any other proposals which may be advanced by any of the governments here. If a better method of treating this problem is suggested or put forward, it will gladly be accepted by us. If there are better and more workable proposals, then we would gladly acquiesce. It has already been decided that we should find a method of amending our constitution in Canada. It is believed that the representatives here can find the way. Those who met in this city nearly eighty-six years ago found a basis for uniformity on immensely more difficult problems, and indeed there would seem to be no reason why in 1950, in the same spirit, this conference cannot find a solution to the problem which will be satisfactory to all of the interests in Canada.

Those are our thoughts, Mr. Prime Minister, arising out of the position of the conference to date. We think that the committee of attorneys general has done a very great and important work in reducing our problem to the stage in which it is today. But I would say the fact that they had done that brings out in bold relief the problem that now faces us. And while I would hope that this conference might be able to find a solution to the problem simple enough to allot those remaining sections under the various headings, I am just doubtful that that can be done. We are doubtful in Ontario that it can be done for the reason that taking history as it has been over the course of eighty-three years it is apparent that there are still, as I say, differences, but honest differences, of opinion as to where the subject-matter should fall. Therefore we think that by the adoption of a formula such as this there is sufficient flexibility to enable us to go ahead to set up the machinery to amend our own constitution. But at the same time in making any decisions here which would allot various things in our constitution we might make decisions unthinkingly in placing certain sections under certain headings in such a way as could fundamentally alter the partnership of eighty-three years ago. Our idea is not to change that, but to find a method by which we can make our amendments and at the same time preserve this partnership.

The Prime Minister mentioned that as time goes on there are important matters that will receive attention and will be the subject no doubt of the

machinery that we set up at this conference. I agree that that is so; but if we adopt a flexible method such as this in our amending procedure we will be on the road to success. Not only that, but we will avoid many difficulties which are bound to arise with the various provinces and the federal government with regard to certain sections, which may or may not be right.

The CHAIRMAN: I think we have made substantial progress. I say to the Prime Minister of Quebec that I think there will be no difficulty in obtaining from the parliament of Westminster the declaration that Canadians could write themselves a new constitution when they want to do so. The only trouble that confronts them is determining to what authorities here they will turn over the power which is now legally vested in them.

I think that as soon as we get to the point where we can say to them what Canadians want is to have them abdicate the powers they have in favour of such and such, we can have that written into a statute which would sanction the amended procedure we are agreed upon.

I am informed by the secretariat that it is desired for posterity to have an official photograph of this conference made in the next room. The photographer is there, and since some of us have appointments in a short time perhaps we might adjourn at this moment to meet at 2.45 this afternoon.

At 12.15 the conference adjourned.

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#### AFTERNOON MEETING

The conference resumed at 3.00 p.m. Right Hon. L. S. St. Laurent, Prime Minister of Canada, in the chair.

The CHAIRMAN: We will resume our session.

Hon. ANGUS L. MACDONALD (*Premier of Nova Scotia*): Prime Minister of Canada, Prime Minister of Quebec and gentlemen, I conceive it to be my first duty, and I undertake the duty with the greatest feeling of sincerity and pleasure, to thank the Prime Minister of Quebec, the government and the people of Quebec for the hospitality that they have shown to us in inviting us to hold this conference in this beautiful and historic city and in these very spacious halls.

Quebec, as its Prime Minister said this morning, is founded on a rock. It is the guardian of the great St. Lawrence River, and I think it exemplifies in its foundations the spirit of the people of the province, as he very aptly pointed out, a spirit of solidity, common sense and firmness in the right as they see right, but there is also among them the gracious Gallic spirit of hospitality and that delightful charm which have made their land and their city so generally beloved throughout all Canada.

I observe that the Prime Minister of Ontario is anxious to claim some share in the renown of the great Champlain. He pointed out that at Orillia there is some memorial to that great explorer. He also made reference to Midland on the Great Lakes. I hate to interject any note of discord into the proceedings, Mr. Frost, but in the interests of historical accuracy and chronology I feel bound to say that the first home which that great man founded on these shores was in the province of Nova Scotia.

Mr. FROST: I should like you to put in an escape clause.

Mr. MACDONALD: Mr. Frost, with the subtlety of the legal mind, said that probably the Orillia building was the first habitation in North America. Well, in 1605 Champlain came to Port Royal. It was from there he was given  
[Mr. Frost.]



directions, as so many other people have been given directions. He then set out on those great voyages and explorations that have done so much to perpetuate his name and to lead to the establishment of this great country.

I do not know how many observed today that there are two flags flying on these buildings—at least two—the flag of Quebec, and on your left as you leave the building there is the flag of Nova Scotia. I imagine that this is the first time that that flag has flown on any parliament buildings other than the parliament buildings of Nova Scotia, and I should like to express to the province of Quebec the very high sense of honour we feel when we reflect that on this ancient building in this ancient city this flag, whose origin goes back more than three hundred years, should find a place on such an occasion.

Mr. Prime Minister, as Mr. Frost said in his remarks this morning, we are here concerned with devising a method of amending the constitution. I take it that by the terms of reference and by common understanding and agreement, that is the extent of our mission and our function. We are to endeavour to devise a method of amending the British North America Act in Canada. It seems to me that it would be well for us to adhere to that task. Some other questions such as whether we should re-write the constitution and make it a completely brand new constitution domiciled in Canada, as has been said, no doubt are very important. It seems to me that perhaps at this time we might defer consideration of that and confine ourselves strictly to the task for which we are summoned.

The history of this matter is, of course, that a general conference or a plenary conference, was held in Ottawa in the earlier part of the year. That was followed by meetings of the sub-committee consisting of the attorneys general of the provinces, presided over by the distinguished Minister of Justice, and attended by all the attorneys general and their advisers. They have produced a report. It seems to me, gentlemen, that we must give consideration to that report. It has been received here this morning; it has been made public. It strikes me that the only course open to us now is to give consideration to the terms of that report.

Exactly what will be done with this passage or that passage of the report, whether we shall agree with the findings of the sub-committee, is another matter. But we cannot, I think, sidetrack that report and treat it as of no consequence. I believe we must dispose of it one way or the other.

That is about all I have to say, Prime Minister. The task is great; it is difficult. It may not be possible to reach final conclusions here this week. It may be necessary to have another conference or still another. But of this I am sure: if the Fathers of Confederation in their generation, meeting here in Quebec in 1864, were able to come to 72 resolutions which formed the basis of the British North America Act, surely we, after eight-three years' experience, are not going to fail where they succeeded.

I think the people of Canada expect great things from this conference and from the other conferences that may be necessary, and I believe that with good will on all sides—it has been manifested up to date—and the earnest efforts of all we can achieve such changes in the Canadian constitution or in the British North America Act as will redound to our own credit, but, what is far more important, will be of lasting benefit to the people of Canada and its provinces.

Hon. JOHN B. McNAIR (*Premier of New Brunswick*): Mr. Prime Minister, associates and gentlemen, I wish at the outset to associate myself with those who have spoken before me in their expressions of satisfaction and pleasure at being privileged to reconvene this conference in this grand and ancient city of Quebec. We are meeting here in surroundings which are rich in history. It has been well said this morning that things which have happened in Quebec have

had a great and lasting effect upon the development of our country. I feel that in surroundings such as these we will get that stimulation and inspiration which will lead us to sound thinking and raise us to a high level of statesmanship which is what the Canadian people are expecting of us at this time.

For us coming from New Brunswick it is a special pleasure to be here. We have many bonds of attachment with the province of Quebec. As you know, we are very close to them in many respects, territorially and otherwise, and we find them good friends and good neighbours at all times.

I did not expect that these proceedings would take the turn they took this morning, and I find myself at some disadvantage at this time. I have had no opportunity to marshal some thoughts which I should like to submit. But under that handicap I will seek to place again before the conference the notion which my province has been advocating from the very outset.

However, I first want to correct a matter of history that has been referred to here today which has to do with Champlain. I might say to our good friend from Nova Scotia that Champlain did not spend his first year in this country in the province of Nova Scotia as it is today. He spent it in what is now New Brunswick but which then was part of Nova Scotia. It was not in the particular environment down there that he mentioned, that was Port Royal, or anywhere in that part of the country. In 1604 he sailed up the St. Croix River and established a settlement with de Monts on a little island. It is still there, although substantially reduced by the action of the waters of the river and the bay. New Brunswick was too rigorous for them. They pulled out the next spring and went where conditions were better and established themselves in another part of Nova Scotia which is Nova Scotia today. There is the true story about Champlain. That was the start of his meanderings on this continent which brought him up to this spot where we are so happy to be at the present time.

In your opening remarks this morning, Mr. Prime Minister, you suggested—and the suggestion has been repeated by Mr. Macdonald—that we should confine our efforts at this time to the purpose for which we were convened, namely, to try to settle the form of procedure by which amendments can be made to the constitution of this country as located at Westminster. I assume that what is in mind is that as a result of the work of this conference legislation will be sought from the United Kingdom parliament to establish such a procedure. In other words, such an amending procedure would rest on legislation of the parliament of the United Kingdom, with all the uncertainty, insecurity and non-permanency involved therein. It may be that we can come to that, and can come to nothing else. If so, we will have made some progress, but I doubt if we should be content with putting this very important factor of our constitution on such an unstable and insecure foundation.

This brings me back to the suggestion that we have advocated from the outset of this conference which convened in Ottawa last January, that we should at some stage—and I think we must at some stage—come to the point of directing our thoughts toward the setting up of a Canadian constitution, a constitution founded upon a Canadian document and domiciled in this country. If we do that then we can work out the amending procedure, and we must have an amending procedure in the constitution which will be free from those hazards to which I have referred.

So far our work has been confined to studying the British North America Act and seeking to classify its various provisions with reference to section numbers in certain groupings or classifications which were suggested at the conference last January. I do not know what the feelings of others are, but I felt there was a lot of futility in that work we were attempting to do. I was very much impressed when I first read Ontario's submission, and I was impressed

[Mr. McNair.]



further today when the Premier of Ontario suggested again, that we should make a different and wider approach to this question of defining a procedure for amending the constitution.

I do not think we can devise a formula or procedure which will operate with reference to section numbers of the British North America Act. It must operate in relation to subject matter, and therefore I think the Ontario submission contains a very important suggestion and the germ of a principle which I think we might well study as we go along.

May I now say that, as was the case in Ottawa last January, I am in full accord with the position taken by the province of Quebec—and which I believe is the position today of other provinces—that we should move forward in this conference towards the setting up of a Canadian constitution. Apparently it is in the minds of some that in advancing that suggestion we were advocating rewriting the constitution, creating an entirely new constitution for this country. It may be possible for us to do that. No doubt there will be difficulties in attempting to carry out such a major operation as that, but I think if we do nothing else we will have made substantial progress if we transfer to this country the constitution as it exists at the present time now domiciled in another country.

I have never suggested that it would be possible to do anything more, but I do think it is possible to do that and to do it rather easily. In order to make clear what our proposals are and have been from the outset—and we have seen no occasion to change them—I wish to quote from our submission of last January as it is reported at page 25 of the proceedings of the conference. I read:

“To evolve a new constitution free from the difficulties and hazards now prevailing, different methods of procedure may be open to us. At present the following method commends itself to me: the initial step would be a conference of representatives of the dominion and of the provinces to formulate a proposed new constitution. This present conference might itself well undertake this task. But since the drafting of a completely new constitution would probably require a very long period of time, the new constitution might well consist of the substance of the British North America Act, 1867, and other relevant statutes, with such necessary changes as might immediately be agreed upon, but in any event including a procedure for amendment thereof in Canada. I do feel, however, that the 1949 amendment to the British North America Act should be most carefully reviewed before being carried into Canada’s proposed new constitution.

“When agreement has been reached on the draft the dominion and the provinces would, in conference, determine the nature of appropriate legislation to be sought from the parliament of the United Kingdom to authorize and empower the Dominion, the provinces and possibly the United Kingdom”—

I would delete that part,

“—the Dominion and the provinces to enter into a treaty, after approval of the proposed new constitution by the parliament of Canada and the legislatures of the several provinces. The treaty contemplated would declare the proposed new constitution to be, and to become, the constitution of Canada on and after a day to be fixed in the treaty. The United Kingdom legislation would also provide that upon the coming into force of the new constitution, as provided in the treaty, the British North America Act, 1867, and certain other enactments of the parliament of the United Kingdom are repealed.”

As I say, I see no reason to modify that thinking as expressed to this conference last January. We have done some further thinking on it, and in order to make our position clear in this matter, and what we are proposing, may I take time to read a draft of what we think the imperial legislation should

be. This would be an act to be obtained through the conventional procedure of a joint address of the two houses of parliament, with a title something like this: "An Act to authorize and empower Canada and the provinces thereof to establish a new constitution for Canada." It would have to have an appropriate preamble including a paragraph to meet the provisions of section 4 of the Statute of Westminster. It would have an enacting clause, and then its substantive provisions would be something to this effect:

1. Canada and the provinces of Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, British Columbia, Manitoba, Saskatchewan, Alberta and Newfoundland, may and are hereby empowered to establish and ordain a new constitution for Canada in the manner provided in this act.

2. When a proposed new constitution for Canada has been approved by the parliament of Canada and the respective legislatures of the said provinces, Canada and the said provinces may enter into an agreement (or pact) in a form and manner approved by the said parliament and legislatures, declaring and ordaining that on and from a day to be named in the agreement (or pact) the proposed new constitution shall be the constitution of Canada and the provinces with the full force of law.

3. Until the new constitution becomes effective, the right and authority of the parliament of the United Kingdom to make constitutional amendments affecting Canada shall continue as heretofore.

4. On and from the day on which the new constitution of Canada becomes effective, the British North America Acts, 1867 to 1949, shall not apply, and shall have no force or effect within or throughout Canada, and no act of the parliament of the United Kingdom passed thereafter shall extend or be deemed to extend to Canada.

In our view that is adequate machinery to put ourselves in the process of setting up a new constitution for Canada in Canada. Of course when the time came to write the constitution that might be set up under such enabling legislation, certain decisions would have to be made. An attempt might be made to rewrite the constitution, or in the end it might be decided that we would just transfer *en bloc* to this country the constitution as it now stands without changing one jot or tittle of it.

Of course in this proposed new constitution there must necessarily be a procedure for amending it in the future. That is why we must proceed with the very important work that has been engaging our attention for so long.

I have nothing more to say at the moment. I did not anticipate when I came this morning that I would have injected these proposals into the discussions so early, but we are opening up a lot of points and matters, and I felt that I might as well put this proposed plan on the table for such consideration at the hands of this conference as it may deserve.

HON. DOUGLAS L. CAMPBELL (*Premier of Manitoba*): Mr. Prime Minister and honourable gentlemen, I should like to join with the premiers who have already spoken and with yourself, Mr. Chairman, in expressing on behalf of the province of Manitoba our appreciation of the hospitality of the Premier of the province of Quebec, and our enjoyment of the opportunity to gather in this historic city of Quebec with our colleagues from other provinces. I do not propose to join in the controversy regarding the travels of the eminent explorer whom we have heard mentioned. I only regret that for his own sake he did not become better acquainted with the prairies because I am sure the difficulties he had in making up his mind as to where he would establish his headquarters would have been resolved in favour of Manitoba. I would suggest to the conference that, while we are leaving him for the time being, it might be worth taking note that until that province which is now so capably represented by

[Mr. McNair.]



Premier Smallwood became a member of confederation, the province of Manitoba had been a part of the British Empire for a longer continuous time than any of the other provinces of Canada. I would say to the conference that if it would just accept the advice and follow the lead of the representatives of those two senior provinces who are now present, undoubtedly great progress will be made.

In speaking on behalf of Manitoba, I would like my first words to refer to the last occasion upon which representatives of the far-flung Canadian provinces met in Quebec to consider together the basis upon which the Canadian nation should be founded. It is now eighty-six years since representatives of the small isolated colonies of the British Empire in North America which formed an insignificant part of the then known world, met together and decided to be joined in a federation and to lay the foundations of a nation to be known as Canada. The soundness and wisdom of the decisions taken at that time need no further evidence than the simple fact that today Canada, a nation of almost 14 million people, stands in the forefront of the nations of the world as a leading member of the Commonwealth and of the larger body which we know as the United Nations.

Since 1864, Canada has grown from a small scattered country with about three and one-half million people to a great industrial nation stretching from the Atlantic to the Pacific, and in international relations, Canada has progressed from a small dependent colony of Great Britain, into the status of a fully independent nation with an important place in world affairs. The work of the Fathers of Confederation has stood well the test of time and no one has ever seriously questioned the fundamentals of the constitution which they prepared. In the years since 1867, however, great changes have taken place in the size and extent of Canada, in the Canadian way of life and in Canada's relations with other nations, and our function now is to review in some respects the work of the Fathers of Confederation and to develop a procedure by which the Canadian people can make whatever changes they consider necessary to bring our constitution abreast of the progress which has been made in Canada and abroad.

In his opening remarks at the meeting in January, Premier Frost gave what is in our view an excellent summary of the objectives towards which we should seek to move when he said that the method of amending our constitution should be:

- (a) Elastic enough to meet the needs of a growing and developing nation;
- (b) Difficult enough to discourage indiscriminate tampering with our constitution;
- (c) Rigid enough to provide ample safeguards to protect minorities and fundamentals and the federal system under which we have developed so satisfactorily during the last eighty-three years.

With this statement, Manitoba is in complete agreement. It might be advisable, however, to elaborate our position somewhat and to add one other factor; namely, the need for a procedure which is sufficiently simple and clear-cut to be understandable by the people of Canada generally, for we must not lose sight of the fact that this is a problem for the people of Canada and not for the governments alone.

In the past a number of matters have arisen in which under our present constitution neither the federal government nor the provinces had the authority and responsibility to take effective action. Our problem at this conference is to devise a procedure under which when such a situation arises in the future the people of Canada can consider the problem and express their views as to whether that problem should be dealt with by the federal government or by the government of each province acting independently, or by joint action between the two levels of government. There is a tendency in some quarters to look upon this conference as a place where the federal government and the provincial governments are each seeking to increase its own authority

and prestige at the expense of the other. This is not true. In a real sense, our duty is to take a broader view and to consider all proposals from the viewpoint of one who asks, "Will this suggestion make it easier or more difficult, for the people of Canada to place authority and responsibility for a particular problem squarely in the hands of the government which is best able to deal with that matter?"

From that point of view it is basic that the Canadian constitution must be sufficiently flexible that if public opinion develops in a particular definite direction, there will be assurance that the necessary constitutional amendments can be made; while on the other hand, the Canadian constitution should be sufficiently rigid to prevent the incorporation of "fly-by-night" short-term ideas, without time for full consideration and without assurance that the rights of all groups in Canada will be adequately taken into account.

I think it is agreed by everyone that there are certain fundamental rights which are guaranteed to the people of Canada, which should not be changed without the fullest consideration, and without clear indication of the approval of the people of Canada. In other words, I think it is generally agreed that there are certain fundamental matters which should be placed in the category of issues which cannot be changed without the unanimous consent of the ten provinces of Canada together with a clear majority of the parliament of Canada as a whole. It is our view, however, that these "entrenched" provisions should be restricted to only those matters which are absolutely fundamental to the continued existence of the Canadian federation. As examples of those basic rights, I might mention the use of the English and the French languages, and the right to unrestricted movement of goods between the provinces.

On the other hand, there are a large number of very important questions upon which there should be no change without very careful consideration—but upon which it should be possible to make changes if a substantial majority of the people of Canada are convinced that changes are necessary.

If, in one of these matters, the people of Canada as a whole, speaking through the federal parliament, approve of a certain change, and if, in addition, the people of a majority of the provinces speaking through the legislatures of those provinces, approve of, and ask for, the same change, it would be most unfortunate if with that large majority in favour of a change, the amendment should be held up because the legislatures of two or three provinces object. In other words, we must be careful to protect the rights of minorities in certain absolutely fundamental matters—but on the other hand, we must be careful to protect the rights of the majority of Canadians in these other matters upon which the welfare of Canada may require that changes should be made. The Manitoba government, therefore, though strongly in favour of complete safeguarding of basic minority rights, is opposed to the inclusion of a great number of subjects in the category which cannot be changed without the unanimous consent of all provinces.

As this is the third meeting within the last nine months between the governments of Canada on this same subject, I do not wish at this time to deal further with general statements of principles, and will therefore turn immediately to certain specific points which, in our view, should be considered by this present meeting at an early point in the proceedings.

Some of the most difficult decisions which we will have to face concern the placing of many important subjects in either category (4) or category (5). It is therefore our view that at the earliest possible opportunity we should reach a conclusion as to what majority of the provinces will be required in the case of an amendment of a provision which should be placed in category (4), that is, to be amended by an Act of the parliament of Canada and an Act of a majority of the legislative assemblies of the provinces. I do not propose, at this time, to devote any lengthy discussion to this matter, but I do wish to say that we

[Mr. Campbell.]



think it should be settled early in our deliberation and to say also, that it is our view that quite adequate protection will be given to the people of Canada and to the governments of the Canadian provinces if the procedure for amendment of this category should be to require the approval of the parliament of Canada and at least six provinces.

In the report which has been submitted to us by the committee of attorneys general, section 125 is shown to have been assigned to category (4) by all the governments except Manitoba. This is the section which exempts crown property from taxation by the federal government or by the provinces or by the municipalities. It has been Manitoba's position from the outset that this section should be treated in such a way that the federal government would be free to deal with its property and to retain or abolish or amend the exemption as it sees fit, and that similarly each province should be free to deal with its own property. We are still of that view. It seems to us that there is no valid reason why the provinces should have any right to refuse to allow the federal government to make its property subject to taxation if it sees fit, and similarly, we see no reason why the federal government should interfere in any action in that regard which any province might wish to take. Our position has consistently been that each level of government should be free to deal with its own affairs in every respect except where it is highly important that the interests of one or the other level of government should be protected, or where fundamental rights of the Canadian people or of minorities require protection. We see no such issue in respect of section 125 and are therefore restating our proposal that this section should be divided between category (1) and category (2).

Section 99 provides that, "The judges of the Superior Court shall hold office during good behaviour but shall be removable by the Governor General on Address of the Senate and House of Commons." In its submission, the federal government proposed that this section and sections 97 and 98 should go in category (3) so that each province would be free to make an agreement with the federal government concerning the requirement that the judges in the courts of that province should be appointed from the members of the bar of that province. In the report of the attorneys general there is recorded a considerable difference of opinion as to how section 99 should be classified. Manitoba is shown as favouring category (4) for the entire section. We have given further thought to this section in the meantime and are now prepared to agree to the federal government's proposal in so far as it relates to the placing of a retirement age limit on the appointment of judges by agreement between the federal government and the province concerned. It is still our view, however, that in all other aspects of the selection of judges and the tenure of judicial appointments, no change should be made except upon a uniform basis throughout Canada in accordance with the procedure of category (4).

I would like also to refer in my opening remarks to section 90. In part that section deals with the procedure for the passage of bills and appropriations through provincial legislatures, and those matters can readily be dealt with as part of the broad question of provincial constitutions. But section 90 also deals with the right of the Lieutenant Governor to withhold his assent to provincial legislation and the right of the federal government to disallow provincial legislation. Let us be clear at once that there is no objection to a procedure by which the courts can declare a provincial act to be *ultra vires* on the ground that it exceeds provincial jurisdiction. Without some such arrangement the constitution would be unworkable.

There is, however, very serious objection to the provision which leaves to the federal government the right to instruct the Lieutenant Governor to withhold assent to a provincial Act, and which gives the federal government the right to disallow a provincial Act, even though the Act is clearly within a field of jurisdiction which is assigned to the provinces under the constitution.

We recognize that one can imagine the possibility that at some time there might be elected in one of the Canadian provinces a legislature which might enact legislation which although quite within its jurisdiction would still be highly injurious to the other provinces and to Canada as a whole. We recognize that there is merit in the suggestion that Canada should have some protection against such a situation. But we are convinced that the protection should not take the form of retaining in the hands of the federal government, an unqualified right of disallowance of provincial legislation. In fact if the choice is between retaining the present right of disallowance and eliminating disallowance entirely, then we unhesitatingly declare our choice to be for a repeal of the disallowance provision.

It seems to us, however, that there might be an intermediate position which would retain some protection against an irresponsible provincial legislature without retaining the undesirable features of the present section which place an unpalatable responsibility upon the federal government and an unpalatable restriction upon each province. It has occurred to us that there might be a provision for disallowance of a provincial act by joint action of the federal government and a group of provinces. We have not attempted to work out the details of such a scheme, but mention it only as a possible alternative. If some such alternative is not feasible, we favour repeal of the disallowance provision.

Our suggestion therefore is that section 90 be placed in category (4) on the understanding that an amendment will immediately be proposed in accordance with the procedure of category (4). As to the nature of the amendment, we would suggest that that issue be left for later consideration and that this conference deal only with the question of procedure.

The most important issue with which we at this conference are faced is that of the treatment of section 92, subsection 13, which provides that the provincial legislatures may exclusively make laws in relation to "property and civil rights in the province." This is certainly one of the most complicated and difficult of all the subjects which we face, but there are really only three ways in which this subsection could be handled, namely:

1. The entire subsection might be placed in category (4).
2. The entire subsection might be placed in category (5).
3. The subsection might be divided and placed partly in each of categories (4) and (5).

In Manitoba's submission to the committee of attorneys general, this subsection was placed in category (4) subject to the qualification that provision should be made for preservation of the Civil Code in Quebec. We still hold to that submission. I think, however, I should make it clear that if we are faced by a choice between placing the entire subsection in category (4) or in category (5), we would not hesitate to declare our support for category (4).

We think, however, that some division of the subsection is preferable from all points of view. We think that those subject matters which are fundamental could be separated from the subsection and placed in the entrenched category. But for the great bulk of the field of jurisdiction which has been held to fall within property and civil rights, we feel that category (4) will provide ample protection. In fact, for many of these matters we feel that it would be fundamentally unsound to so arrange our procedure that a veto by one province would hold up an amendment desired by the people of Canada and supported by the parliament of Canada and the legislatures of a majority of the provinces.

Our suggestion therefore is that this conference should agree that section 92 (13) should be divided and that those who feel that there are within that subsection matters which should be entrenched, should be asked to prepare a list of the items which they would place in category (5).

[Mr. Campbell.]



At this point I would like to refer briefly to the remarks of Premier Frost this morning in which, as I understand it, he suggested that this conference should not attempt to completely allocate all sections of the Constitution to one or another category. In so far as agreement has not been reached or cannot now be reached—incidentally, Mr. Prime Minister, as delegates know, a great measure of agreement has already been reached on many of these important points—but in so far as agreement has not been reached or cannot now be reached, Mr. Frost suggested that a procedure should be established for reference to the courts to decide the matter. While we realize that there are matters which could quite properly be referred to the courts for decision, we must not lose sight of the fact that the function of the courts is to interpret the existing law, whereas it is the functions of this conference and of the legislative bodies which we represent, to make any changes in the law which are necessary to meet new conditions as they arise. We therefore suggest we will make progress if at this conference we allocate as many sections and subject matters as we can to definite categories. In particular we feel that this conference is the appropriate body to recommend to parliament and the provincial legislatures what matters are fundamental and should be entrenched. The result would be that all matters which are of joint concern to the federal government and all the provinces, and which were not entrenched, would automatically fall into category (4).

Our present constitution has served us for more than eighty years and has served us well. We should not lightly discard it, or alter it in any important respect. In particular, we should not lightly enter into an arrangement which will make it unworkably rigid and inflexible. The strength of the Commonwealth has always been the flexibility and adaptability of our institutions and our constitutional forms and practices which have allowed us to adjust our forms of government from time to time to keep abreast of the changing attitudes and opinions of our people. From a colonial empire, governed from London, we have in less than a century progressed to a commonwealth of self-governing, independent nations in which our relations with Great Britain and with each other are more cordial than ever but in which the complexity and variety of our constitutional ties almost defy description.

We in Canada should not lose sight of the strength which has come from this flexibility, neither should we lose sight of the frequency with which so-called inflexible and unchangeable constitutions have been overthrown by the march of events in other countries. For this reason, we, at this conference, must take care that in our efforts to reach agreement, we do not agree upon something which is less desirable and less suitable to Canada than that which we already have. Certain proposals have been made which if carried out would produce such a degree of inflexibility that in our opinion their acceptance would be a step toward a less desirable constitution. To be specific, we feel that if section 92 (13) is as a whole placed in category (5), the result will be such a degree of rigidity that the interests of Canada would be better served if we were to agree to retain our present constitution and our present method of securing amendments. That method has at least the virtue that it can be used if Canadian opinion is sufficiently clearcut. With all its shortcomings and its delays, it has made change possible.

I would not want to leave the impression that we of Manitoba feel that the present situation is satisfactory or that we are opposed to a change. On the contrary, we believe that a change is long past due and that at the earliest opportunity the people of Canada should take full control of the Canadian constitution and of the procedure for amending it. In making changes to avoid our present problems, however, we must not introduce a rigidity which will create new and greater difficulties for the future.

Hon. Mr. BYRON JOHNSON (*Premier of British Columbia*): Mr. Prime Minister and Gentlemen, I may say that coming three thousand miles to here from the Pacific coast, I cannot lay any claims as facts that the great explorer, Champlain, sojourned in our province while on his exploratory tour in Canada. It is of interest however, to hear that the Premier of New Brunswick lays claim to an honour already claimed by the Premier of Nova Scotia. I am almost sure that we will hear more of the matter when we come to our friend from Newfoundland.

When this conference was convened last January in the federal capital, my colleagues and I were deeply impressed with the historic significance of the meeting.

On this occasion its importance is further enhanced by the fact that we are convened in the ancient city of Quebec where Confederation saw its beginnings. It was here, in this historic provincial capital, so richly endowed with monuments to those who founded the country, that there took place the conference of 1864.

Today we sit around this table in an endeavour to find a means by which we, as members of a sovereign nation, may amend our own constitution. We are able to meet in these happy and auspicious surroundings through the gracious hospitality of Mr. Maurice Duplessis and the government which he heads.

May I say, Mr. Prime Minister, how much we as British Columbians appreciate the courtesy and the kindly gesture of the province of Quebec, and how hopeful we are that at this conference, held in the city where the original conference which led to Confederation was held, we shall come to new agreements that will permit Canada to grow in stature, provide the means of improving the welfare of the people, and allow us to take our rightful place among the nations of the world as a truly sovereign power in every respect.

The British Columbia delegation has come here first as Canadians. We are determined to do our part to grapple with all the problems in a true spirit of friendliness and with a determination to bring about, in so far as lies within our power, an agreement of such a character that will enable Canada as a nation to deal with those problems and to implement those measures which are of vital concern and in the best interest of Canada as a whole.

There are important matters of national concern which can only be settled after we have first agreed upon a constitutional method to deal with them. The economic progress and social advancement of our nation rests on such agreement as we can reach at this conference. While British Columbia will at all times jealously guard our fundamental provincial rights, we are nevertheless, fully aware that the passage of time has brought and will bring to the front as national problems issues which were once considered as only of a local or provincial character.

I am firmly convinced that if we are to progress we must recognize that the passage of time brings with it changing conditions. We must, therefore, make it possible for the people of Canada to amend their own constitution in such a way as to facilitate the enactment of measures for the promotion of the welfare of its citizens as required by changing circumstances.

I mention, Mr. Prime Minister, but merely by way of example, such measures as a national contributory pension scheme and further steps for the care of the health of our people. You mentioned unemployment insurance, and I believe at our meeting here one of the things we should see to is that we give the federal authorities proper power to deal with that very important matter.

Though I have not had the opportunity of fully considering the proposal of the Hon. the Premier of Ontario, which we will undoubtedly discuss more fully as the conference proceeds, it occurs to me that subject matters such as those I have mentioned, involving as they must the granting to the federal parliament of

[Mr. Johnson.]



powers which it does not now possess, and likewise diminishing to that extent the important and fundamental provincial powers under the heading of property and civil rights, point up the necessity for this conference to deal specifically with subject matters dealt with broadly in some of the sections of the B.N.A. Act.

Otherwise upon what basis could the courts decide what are and what are not the fundamental or entrenched rights of the province and upon what subject matters the provinces and the dominion are agreeable that amendments should be made without unanimous consent.

It seems to me, at the moment, that this conference must give more specific direction to the courts than is contemplated in Mr. Frost's proposals if the courts are to function in the manner suggested.

Mr. Prime Minister, I have nothing further to add at this juncture. Any specific observations, I feel, may best be made when each point is raised.

The continuing committee has worked diligently and in a splendid spirit of co-operation, otherwise it would not have been possible for us to convene here today to consider their recommendations.

I trust, Mr. Prime Minister, that as we consider these things we shall deal with them in a manner which will react to the benefit of Canada as a whole, and I feel certain that that will be done.

Hon. J. WALTER JONES (*Premier of Prince Edward Island*): Mr. Prime Minister and Premiers, I want to say that as I travelled here by car a few days ago, coming in at Matapedia and travelling through the province, I was delighted. I was impressed with the improvements and the effect they must have on tourists and others who study the history of the place, and who come here to enjoy this beautiful city. Premier Duplessis should be congratulated on being able to provide such a setting for this conference.

Several speakers have referred to Champlain. We have no record of his ever having visited Prince Edward Island. I do not know how he missed it. Perhaps it is because it is a small place. We know that he came first to the maritime provinces and afterward to Quebec. We know that we on Prince Edward Island were an important link with Quebec in the old days, as was Cape Breton Island with Nova Scotia, when the colonists in the New England States and in Virginia did not want the French too close to them when they were fighting for the valley of the Ohio. At that time France built a fortress at Louisburg, which has been referred to as the Dunkirk of America. We know that Nova Scotia, being a non-agricultural country, used to come to Prince Edward Island to get the food to feed the soldiers in the Louisburg fortress. Therefore at one time we had thousands of French on Prince Edward Island feeding the Nova Scotians. They were afterwards carried off. It is not written in poetry, as is the expulsion of the Acadians from Nova Scotia, but ten shiploads were transported back to the Old Country at one time from Prince Edward Island. In those days we were an agricultural country, as we are now.

To come down a little further, the Prime Minister of Quebec mentioned this morning that Quebec was the basis of our civilization in Canada. In 1774, on the eve of the revolution in the United States, Great Britain was forced to make concessions to Canada to hold the country. That was the beginning of our civilization. Ninety-nine years after that, sir, we joined the Dominion of Canada.

At that time we in Prince Edward Island were rather well to do. We were getting along pretty well. We did not join in with the rest of Canada although Prince Edward Island was the scene of the first conference. We held out for six years. We did not think it was to our advantage to join Canada until we saw railroads coming into Canada and other means of communication. We made a tight bargain. We came in because we were promised continuous communication with the mainland. The only other reason we came in was that

we desired to buy out the British landlords who were in possession of our land. We wanted to borrow money to buy them out. These are the only two reasons why we entered confederation at all.

At that time we got the right to borrow \$800,000 at 5 per cent to buy out the landlords. You will know, sir, that in the days after the Treaty of Paris it was mooted that the place should be surveyed, and a surveyor general of British North America was appointed. The man who was appointed was Major Holland who fought here with Wolfe on the Plains of Abraham. As I say, he was appointed surveyor general of British North America. His papers read that he was to survey all of that tract of land lying north of the Potomac River as far inland as His Majesty's dominions extended. The first place he surveyed was Prince Edward Island. He left there in March, 1764, and we still use the survey made by Major Holland. That was twenty years before either Ontario or Quebec was surveyed.

Leaving history aside, we come down to the question of considering the constitution and the report of the attorneys general. It is an important document, and we think we should make a few comments on it.

The government of Prince Edward Island has had under consideration the report of the Committee of Attorneys General to the Constitutional Conference of the Federal and Provincial Governments.

The report indicates that some considerable progress has been made in securing agreement between the provincial and federal authorities as to where, in the categories outlined, the various sections of the British North America Act and other constitutional provisions should be placed. A consideration of these indicates that, on the whole, agreement has only been arrived at on matters which in the first instance were deemed to be of fundamental concern and, in the second place, in respect of those which are only incidental to a proper constitutional revision.

Our government feels that a great deal of the work of the committee might have been obviated had the instructions given to it by the main conference included a proper definition of Category (4), namely, provisions which concern parliament and all of the provincial legislatures. To place sections of our constitutional documents in this category, without having had it previously defined, would appear to have placed a burden on our committee which never should have been placed upon them. If Category (4) should mean the consent of the federal parliament and a simple majority of the legislatures, then certain considerations would have been applied in determining what should be placed in that category. If, however, the definition meant a majority of the legislatures and a stipulated proportion of the population, other considerations might apply. In the third place if it meant a greater proportion of the legislatures and a greater proportion of the population then other considerations would likewise have been applicable. The report would appear to indicate that many of the provinces placed certain sections under Category (5) as concerning fundamental rights because they were uncertain as to what the anticipated definition of Category (4) would be. We feel that before proceeding further the first consideration at this conference should be to arrive at some agreement on the definition of that category.

The principal deduction to be made from the report of the Committee of the Attorneys General would appear to be that the important matters dealing with federal and provincial legislative jurisdiction as embodied in Sections 91 and 92 of the British North America Act had either been shelved altogether or that the limited instructions which the respective governments had given their representatives on that committee tended to place any proposal for constitutional amendment in a strait-jacket. We had hoped that some flexible method of constitutional amendment might have been arrived at which would have been satisfactory to all the governments concerned. We feel that the relationship between Sec-

[Mr. Jones.]



tions 91 and 92 is such that any amendment to either section is bound to result in either increasing or diminishing the enacting powers of the respective legislative bodies, and that, therefore, the method of amending the one should be correlative to that of amending the other.

The report of the committee would further indicate that while certain of the provinces were prepared to provide for a flexible constitution by placing the various subsections of both these sections in Category (4), yet the two larger provinces insisted that all these be placed in Category (5), which would have the practical result of rendering our constitution rigid and unchangeable. Unless the preliminary views of those provinces have undergone some change in the interval, then it appears to our government that it would be preferable to leave the constitution in its present amendable form.

The government of Prince Edward Island is prepared to co-operate in every way to fashion a satisfactory constitutional agreement if such can be determined at this conference. We desire, however, that whatever constitutional changes are agreed to, and whatever methods of amendment are determined upon that these should have all the solemnity and sanction of a formal agreement which would be honoured in future in accordance with its terms. The basic constitutional documents, in so far as my province is concerned, are embodied not only within the terms of the British North America Act, but those of the order in council admitting the province into the union on July 1, 1873. In that document certain solemn guarantees were given by Canada to the province of Prince Edward Island on the strength of which we entered the union.

As far as our province is concerned one of the main terms of that compact was the obligation of Canada to assume and defray all the charges concerning the establishment and maintenance of efficient and continuous communication, winter and summer, between the island and the mainland of the Dominion. The position our province takes, and will continue to take, is that this was an obligation on the part of Canada to provide a highway between the province and the mainland of the Dominion in the light of current transportation trends and developments. Consequently certain ferry boats were provided to maintain the service. Later, docks were built and provision made for the transport of railway cars and highway vehicles. Then by a mere order in council the management of the ferry and docks was entrusted to the Canadian National Railway Company. The recent strike of the employees of the company entailed a complete interruption of the service for a period of nine days (and potentially for a much longer period) when communication between our province and the mainland was neither continuous nor, in fact, maintained at all. The order in council entrusting the management of the ferries to the Canadian National Railway Company contained a provision reserving the right of the federal government to terminate the agreement at any time; though, even without that reservation, the power would still have resided in the federal government.

Before the strike began our government made representations to the federal authorities asking that proper steps be taken to see that, should the strike occur, the service would not be interrupted and that our right to continuous communication would be maintained. However, though a simple order in council could have transferred the ferry operations to other management not subject to strike, no action was taken in that regard and for the period indicated above the solemn obligation of Canada was disregarded. Our people were completely isolated from rail and highway communication with the mainland.

In the emergency a special session of the legislature was summoned and our stand made clear by a resolution unanimously adopted, which was forwarded to the federal authorities.

Our province desires assurance that:

- (a) A re-statement of the provision respecting the maintenance of adequate and continuous means of communication between the island and the mainland of the Dominion in terms admitting the principle already inherent in our confederation agreement of transportation facilities in keeping with current trends and developments; and
- (b) Steps will be taken immediately to see that no interruption of service can happen in future.

When this section of the constitution is adopted in the revised form we feel free to co-operate and even compromise on the other sections.

Hon. THOMAS C. DOUGLAS (*Premier of Saskatchewan*): Mr. Prime Minister and Premiers, ministers and delegates to the conference, I should like to join with those who have preceded me in conveying through you, sir, to the Premier of Quebec and his government our thanks for their very kind hospitality in this lovely and historic city of Quebec. Coming here, as I did, from a province which has just lost about \$200,000,000 in frost, I am delighted to see your beautiful countryside and your people living in such prosperous and happy circumstances.

I am not going to attempt to join in this controversy over explorers. I am a little afraid that some cynic may find some deep-rooted significance in the concern which a group of politicians is showing over explorers, and feel there is some similarity between the two. It was said of many of these early explorers that when they started out they did not know where they were going, and when they got there they did not know where they were, and when they got back they did not know where they had been. There may be those who feel that that is why we are so much concerned with the early explorers.

At the last plenary session of this conference it was generally agreed that it was inconsistent with our dignity as a nation that we should not have the power to amend our own constitution. Within a few hours of the opening of the conference it was evident that there was unanimity on all sides that if it were at all possible we should seek to work out a procedure whereby it would be possible to amend our constitution in the Dominion of Canada.

One or two thoughts have been introduced since that time. First of all I should like to make reference to the suggestion this morning of Premier Duplessis and Premier McNair with reference to the advisability of a brand new Canadian constitution, a Canadian document domiciled in Canada.

As the Saskatchewan delegation outlined in its statement on January 10 last, at the first session of this conference, we would welcome a Canadian constitution, a Canadian document, domiciled in this country, and we think that ultimately that is the goal toward which the Canadian people ought to work. However, if we are to embark upon so large a task as that it seems to me that one or two things are necessary. One is that the basis of the conference would have to be widened. Any conference that was going to undertake to write a new constitution for Canada ought to be, as the first Quebec conference was here in 1864, a conference representing all political parties; and you may have a delegation from each province representing not only the government of the province but the official opposition, and from the parliament of Canada, not only the government of Canada but the opposition groups in the House of Commons. After all, governments come and go—some take longer to go than others—but they go, and constitutions stay on. It would seem to be the height of wisdom that if over a period of years we are to have a continuing conference working on a constitution the opposition parties, and particularly the official opposition ought to be represented at that conference because many of them may, in the course of the very time that we are working on the constitution, be called upon to accept the responsibilities of government.

[Mr. Jones.]



Also, if a project of such magnitude is to be undertaken we would feel it would be necessary to set up a great many working committees and to plan this over a long period of time. We would want, however, to be assured of two things. In the first place, in starting to make a new constitution we would want to be assured that it would be on the basis of the old constitution that is the basis of the Canadian nation, that constitution which makes it possible for this country to function as a nation. We would also want to make sure, before we asked the United Kingdom for any declaration that they would no longer handle amendments, that that would not be done until we had an amending procedure. We would not want to see Great Britain sign off the present procedure we have until we have adopted a procedure satisfactory to all the groups concerned. I would submit, Mr. Prime Minister, that even if we start on this very laudable task of building a Canadian constitution there will have to be in that constitution an amending procedure. For that reason it is all the more essential that we shall continue the work of this conference and seek to find such an amending procedure. If we cannot find that certainly we cannot begin to draft a new Canadian constitution.

In passing I should like to say a word with reference to the suggestion put forward by my friend, the Premier of Ontario. I am not sure that I am clear as to the suggestion he made. I know all of us will give it a good deal of study, and he will no doubt be clarifying it as we go along. I should like to say that if the submission involves referring to the courts the task of determining into what categories certain clauses shall go, we would feel that was asking the courts to do work that we ought to be doing, that matters of policy are matters which cannot be referred to the courts, and that we cannot have a constitution determined by judicial interpretation. If I caught his words correctly, I think Mr. Frost said that there is a possibility that, in trying to allocate the various sections, we may change the basis of the partnership of 1867. But judicial interpretations have already changed the basis in a good many cases, for instance, the interpretation of property and civil rights, which has been given a very broad interpretation, and which to some extent has had the effect of changing our constitution by judicial interpretation.

If we were to give to the courts the much greater responsibility of determining whether a certain clause was an entrenched clause or whether a certain clause can be changed by the parliament of Canada and a majority of the provinces, we would be making it possible to draft a constitution by judicial interpretation.

I should like to say that we from Saskatchewan are less hopeful than we were before the plenary conference began. At that conference very little was accomplished in fact, but there did seem to be an abundance of good will and apparent willingness to co-operate. Such an attitude is, of course, indispensable if any progress is to be made.

Next came the conference of Attorneys General held in Ottawa on August 21, 22 and 23. I was not in attendance at the meeting of this committee, but I have been advised that again there was an abundance of good will. I have also been informed that there was a unanimity of opinion as to the classification of sections and subject matters over a considerable part of the British North America Act. Unfortunately, however, this agreement came within an area in which the parties were almost bound to agree.

In the opinion of the government of Saskatchewan, there was no agreement in the really vital area, that is, Section 92 of the British North America Act, and particularly clauses 13 and 16 of that section. Some of the provinces seem to have desired that these clauses should be entrenched, that is, that they should be amendable only with the consent of the parliament of Canada

and of the legislatures of all ten provinces of Canada. I feel that I must state emphatically that this is a proposition to which our government is unable to agree.

It has been stated, so I am informed, that clause 13 covering property and civil rights is a fundamental; that it is a fundamental to each province. I wish to express one or two fundamentals which are fundamental to me. The first is that the British North America Act was designed to create a nation, and that while properly leaving a large area of local government to the provinces it was not designed to create a confederacy of autonomous provinces. The idea was to build a nation on the basis of the federal principle. My second fundamental is that a constitution is merely an expression of an enumeration of powers for the time being under which governments may do what they exist for, namely, to satisfy human needs.

These views are fundamental in the opinion of the Government of Saskatchewan. That being the case, we feel that the entrenching of 92(13) might prove fatal to the progressive economic and social life of Canada. For instance, it may well prove highly essential that the Dominion parliament be given jurisdiction over industrial disputes and other phases of the labour problem; yet such legislation would fall directly within property and civil rights as was held explicitly by the judicial committee in the Snider case twenty-five years ago. If clause 13 of Section 92 is entrenched, it would be within the power of a single province to prevent the enactment of such legislation. The same can be said of marketing legislation, price fixing legislation or contributory social security programs. This, in my opinion, is a situation which should not be tolerated.

I submit, Mr. Prime Minister, that at the present time, when we are facing a very serious international situation and facing many grave economic problems, not to require the giving to the federal government of power to deal with matters such as price fixing, contributory social security programs, and national marketing legislation, could very easily put Canada into a strait-jacket. Any of the delegates here who attended the conference on marketing which was called last February knows the confused state of marketing in this country at the present time, with the federal government having a Prices Support Act, an Agricultural Marketing Act, delegating certain powers to the provinces, and with the provinces seeking to set up natural products marketing acts and seeking to act almost as the Department of Trade and Commerce. He knows how essential it is—and I think it will become increasingly apparent—that there should be national marketing legislation. We would take the position that if the majority of the people of Canada, the parliament of Canada and the majority of the provinces of Canada become convinced that national marketing legislation is essential it should be possible to procure an amendment for that purpose.

The same is true of price controls. I am not arguing as to the advisability or inadvisability of having price controls, but I am saying that if the economic situation became such that price controls were a necessity, it should be possible to procure that power for the federal government to exercise.

Social security programs are becoming increasingly the concern of the Canadian people. If the day should come—and I for one hope it will come very quickly—when the parliament and the provinces of Canada will be prepared to embark upon some type of social security program, particularly in the field of health insurance, in which my friend, the Premier of British Columbia and myself are vitally interested, having made a small beginning in that direction, then we should be able to take action. If an amendment to make such a social security program possible is required, it should be possible to obtain that without having it vetoed by one provincial government.

[Mr. Douglas.]



It is the feeling of our government that no province has anything to fear in the matter of these local rights or spheres of jurisdiction. We are quite prepared to entrench the real fundamentals, such as language, education and the basic freedoms of worship and expression. We have already suggested that the constitution should contain a Bill of Rights which would entrench these fundamental rights against arbitrary action either by the Dominion or any group of provinces. What else is there to fear? Surely it is inconceivable that the any one province, let alone a majority of provinces, would ever wish to yield a local matter in its local aspect. It seems ridiculous to suppose that the Dominion would ever wish to absorb them. Surely there would never be any possibility that such matters as the sale of property, wills and successions and so on would ever be interfered with by the Dominion. I can anticipate no possible interference with the provinces in relation to local matters.

It has been suggested that a compromise might be made which would at one and the same time give an acceptable element of flexibility to the constitution while also entrenching purely local matters. I think that was mentioned by my friend, the Premier of Manitoba. Two methods of achieving this have been suggested. The first would be by placing section 92, clause 13 in Group 4, except for an enumerated list of matters such as sales of property, wills and successions. It has been suggested that this enumerated list would be entrenched, that is, placed in Group 5. I regret to say that in our opinion it would be practically impossible to work out such a list so as to achieve the desired flexibility. Future substantive amendments to Section 91 would be endangered. In particular it is believed that the divisions of the civil law of Quebec overlap many matters that would come within such amendments to Section 91.

The second suggestion is to entrench Section 92, clause 13, that is, place it in Group 5. Then certain enumerated matters would be placed in Group 4, such as social insurance, marketing, price control and so on. In our opinion this technique would be equally unsatisfactory. We cannot in any sense predict what the social needs of Canada will be a few years hence. When we make a list of the things which can be amended by the parliament of Canada and a majority of the provinces we automatically exclude all things that are not listed, not specified, and it becomes definite.

So I come back to my original position, that Section 92, clause 13, in our opinion should not be entrenched. By way of recapitulation I may state that this is for two reasons: first, so that the federal government may be clothed with the necessary powers to enable Canada to function as a nation. In a changing international scene this is a matter of supreme importance, whether in time of war or time of peace. It seems to us that it would be nothing short of a calamity that Canada should not be in a position to act fully as a nation in her relations with other nations, whether this involves treaties, trade arrangements or re-arrangements of the internal economy of Canada. Secondly, I desire to see a flexible constitution in the interest of the people of our province. There are many social services which these people need and deserve. The province cannot provide them; on the other hand Canada as a whole can. To a large extent the inability of the province to provide these services can be related back to national policies. These are matters that should be corrected in the interests of national unity, which to me is a fundamental. I do not want our hopes to be frustrated by a completely inflexible constitution.

Saskatchewan submits that no substantial progress has been made in resolving our problem. As previously mentioned, attempts were made in 1927 and 1937, and there were likely others. They all failed to work out an adequate procedure for amending our constitution. It is reasonable to ask why they failed. I think one reason is certainly obvious, namely, that the present method of amendment may have been considered more desirable than the method advocated by some provinces. Canada has a flexible method of amending its constitution at the

present time. All that is required is a joint address of the federal parliament to the imperial parliament. It may be unbecoming to our full status of nationhood, but it is elastic and workable.

Saskatchewan would remind those provinces which are desirous of entrenching Section 92 that with the *status quo* there are no unchangeable rights vested with the provinces; there is no absolute provincial security against infringement of their rights. It need hardly be mentioned that an amendment adding a category to Section 91, procured under the existing practices, gives the federal parliament full authority in that field, no matter how it may encroach upon Section 92 and no matter what provisions of that Section it may subtract jurisdiction from.

We therefore find it difficult to understand the attitude so far displayed by some of the provinces. They seem obsessed with the idea of entrenchment. If they continue with that apparent goal, however, it would seem to us that many of the other provinces could not possibly agree. The result would be that we must continue with the *status quo*. And, as pointed out, under the *status quo* there are no entrenched sections. Many of the provinces, I believe correctly, have emphatically stated that they would much prefer the *status quo* rather than any ill-considered rigidities which have been advocated, Saskatchewan is one of those provinces.

One other matter should be referred to at this time. We feel that this conference ought not to adjourn without a discussion of the desirability of certain substantive amendments to our constitution. This is a matter of at least equal importance with the question of the technique of amendment. In particular I have in mind the question of delegation of legislative jurisdiction. It is my recollection that it was agreed at the plenary session in January that this item should be placed on the agenda for discussion.

In closing may I say that it is my hope that the central provinces will be willing to take a more realistic view of the job we are trying to do. If, on the other hand, there is no change in the attitudes that have been expressed and are evident from the report of the Committee of Attorneys General, then I wish to state that as far as the province of Saskatchewan is concerned, we will not agree to encumbering the generations to come with such a rigid procedure for amending the constitution that a legal barrier will be erected which will make it virtually impossible for the governments of Canada to meet the changing needs of a changing world.

Hon. E. C. MANNING (*Premier of Alberta*): Mr. Prime Minister and gentlemen: I should like to join with you, sir, and with the others who have spoken, in the appreciation that already has been expressed to the Premier of Quebec for the very kind welcome he extended to us this morning, and for the gracious hospitality he has extended, and I know will continue to extend to us throughout the tenure of this conference. In his remarks this morning he made reference to the Quebec rock on which this city rests, and he drew from it what I thought was a fitting parallel with reference to the solid foundation on which the union of the peoples of this country was founded.

I confess that in our part of Canada we perhaps have few rocks that are of interest to historians. Our rocks primarily are of interest to geologists, but we have learned a few things from those rocks that I think may be applicable to the rocks in which historians have an interest. We have found that by digging into the rocks there that had their origin in antiquity it is possible to bring forth benefits for the people of this country as a whole.

Briefly, Mr. Prime Minister, that is our attitude in approaching this question of constitutional amendment.

We do feel that after the lapse of time since the Dominion of Canada came into being there is need to go back into the principles which were set forth [Mr. Douglas.]



at that time for the purpose of modernizing and bringing the Constitution up to date to meet a changed set of circumstances. We all seem to be in agreement as to the importance of this question of constitutional amendment. There is today an added reason why this matter is of perhaps graver importance than ever before.

You, sir, this morning, made reference to the unsettled state of world affairs in this world today. The present world situation underscores the importance of public respect for properly constituted authority. After all, the constitution of a country is the basis or foundation on which the organized society of that country rests. Once there is an undermining of confidence in and respect for constituted authority that country has started down the road that leads ultimately to the destruction of all its democratic institutions and the collapse of those things on which organized society rests.

We should not lose sight of the fact that we do not get respect for constituted authority merely by saying it is important and that it must be given. If we are to have proper respect for constituted authority, and if that respect is to be retained, it is necessary that the constitution itself be such that by its very nature it commands not only respect, but the vigilant defence of the provisions that it embodies.

To do that, the constitution must have four characteristics. In the first place it must be a true expression of the will of the people of the country that is governed by it. I believe that is one of the strongest arguments for saying that our Canadian constitution should be rewritten and should become a wholly Canadian document domiciled in this country, a document which would be approved and ratified by the parliament of Canada and the legislatures of the provinces representing the people of this country as a whole.

Secondly the constitution must preserve the rights of minorities as well as of the majority. Certainly in these days when there is such a tendency towards infringement on the rights of individuals the importance of this feature is obvious. Protection against infringement should apply to governments as well as organizations and groups of people, in short, against whoever it may be that attempts to infringe on the rights of others.

In the third place the constitution must be consistent and practicable. By that I mean the constitution must not assign responsibility to a government, dominion or provincial, without assigning at the same time to that government the necessary legal authority to discharge fully the legal responsibility that has been assigned. This feature of a constitution relates particularly to its fiscal provisions as they relate to the responsibilities assigned particularly in the field of social services.

Fourthly the constitution should be capable of amendment when such amendment is necessary in the interests of the people governed by it. The two characteristics of its amending provisions must be: firstly, they must be sufficiently rigid to ensure preservation of its basic principles; and, secondly, there must be a sufficient degree of flexibility so that the amending procedure is not unworkable. Those two characteristics may seem to be contradictory but I think there is a position where they can be reconciled one with the other.

That brings us, Mr. Prime Minister, to a consideration of what our procedure should be from here on. I am convinced that our problem is not going to be solved by a mere restating of the general situation with respect to this matter, which is something on which we are pretty well agreed and which already has been stated on numerous occasions. In other words, we have got to get down to realism, not generalities, but hard and fast cases, as to just what can be done to reach the goal which we desire to reach.

It is our conclusion in Alberta, from the previous general conference, and from the report of the attorneys general on the work which they have carried out, that we cannot divorce the question of the amending procedure from the

nature and character of the constitution itself; and that if we attempt to isolate the matter of procedure for amendment from the pith and substance of the constitution itself, we inevitably are going to come up against a stone wall sooner or later in our discussions.

I find myself in substantial agreement with what was expressed this morning by the Prime Minister of Quebec and again this afternoon by the Prime Minister of New Brunswick. After all, gentlemen, a wiser man than any seated around this table once said: "No man putteth new cloth on an old garment." That is a fundamental and basic principle with which I certainly agree.

To attempt by a patchwork method to bring our present constitution to a position satisfactory to the respective governments of this country is, I think, approaching the matter by a procedure that holds little hope of success.

It has been suggested that the task of rewriting the constitution is so great in magnitude that it should not be attempted at this time. My answer to that, Mr. Prime Minister, is: when is there going to be a better time?

There is no reason to hope that any time in the foreseeable future is going to be more appropriate to come to grips with the fundamental task. I cannot see any better time coming up than right now. It seems to me that the first step we should take as a Conference is the one suggested by the Prime Minister of Quebec this morning, and this afternoon by the Prime Minister of New Brunswick—that is an approach should be made to the British government to secure from them, and I see no difficulty in this, a declaration to the effect that we in this country are free to proceed with the rewriting of the Canadian constitution as a Canadian document to be domiciled in this country. That is perhaps little more than a formality at this stage, but it would be a declaration of intention of the Canadian people and I am certain it would receive the endorsement of the parliament of Britain.

Side by side with that, there are certain pertinent questions we should decide which are necessary for the guidance of any committee attempting a rewriting of the Canadian constitution. Certain difficulties came to light in the work of the committee of attorneys general. For example, with respect to group (6) in the categories decided upon before, and which deals with sections of the B.N.A. Act which should be repealed, it seems from the discussion in the working committee, that the government of Canada, and some of the provinces at least are not in full agreement as to just what was meant or intended in the case of group (6). I understand that the Canadian government takes the position that group (6) should deal only with those sections of the B.N.A. Act which are spent, whereas many provinces take the position that this section dealing with the matter of repeal should apply not only to sections of the B.N.A. Act that are spent but to sections which are operative today but which many of us feel should not be operative. That is a fundamental question which should be decided as a directive to any working committee carrying the work on from here.

There also is difficulty with regard to group (2) dealing with provisions which are of concern to provincial legislatures only. Here again, what sections of the B.N.A. Act are to be placed in that group depends largely upon the nature of the constitution and the amending procedure which is adopted. That is another reason why I say that you cannot divorce the amending procedure from the nature and character of the constitution itself.

Another problem that arose in the working committee concerns the fact that there are sections in the present B.N.A. Act which you might refer to as dual sections—that is in one clause they refer to matters that are of concern to the government of Canada and, in other clauses to matters which concern the provinces. Obviously those sections cannot be taken in their entirety and placed in one category. It necessitates a breakdown of the subject matter in those sections so they can be properly allocated.

[Mr. Manning.]



Then there is the question of what is meant by a majority of provinces. That is another matter which must be settled before any working committee can properly classify the sections of the present B.N.A. Act or rewrite the constitution. Does a majority mean simply a bare majority? Does it mean a substantial majority? Does it mean a bare majority of the provinces and the Dominion parliament? Whatever definition is arrived at will decide the category into which much of the subject matter of the B.N.A. Act will be placed. The definition of "majority" certainly will affect the categories in to which some subject matters should be placed.

It seems to me, Mr. Prime Minister, that all of these points emphasize what I said earlier, namely that it is impossible to divorce the procedure for amending the constitution from the nature and the character of the constitution itself. If you agree with that conclusion, it is obvious that the only way we are going to reach our objective is to broaden the terms of reference of the working committee or of any other committee which the conference, in its wisdom, decides to set up; and authorize that committee to proceed with a complete redrafting of the entire constitution. Then we would have something concrete to discuss in an attempt to finalize the whole matter before us.

Frankly I do not feel that the problem of redrafting is any larger than the problem of trying to arrive at a procedure for amendment with these other matters left in an indefinite state. While it is the desire and intention of Alberta as a government to do everything we can to facilitate the course of action approved by the conference, I say quite frankly that in our judgment we will not arrive at the desired goal unless we include in the matter under discussion the whole question of a rewritten constitution, rather than merely attempting to deal with the procedure for amendment as divorced from the general contents of the constitution itself.

HON. JOSEPH R. SMALLWOOD (*Premier of Newfoundland*): Mr. Prime Minister and Gentlemen, for the Newfoundland delegates who are here it is a particular pleasure to be in the province of Quebec, in the capital city of that province—the city of Quebec.

Between Newfoundland and Quebec there is, I think, a closer bond than between any other two Canadian provinces, certainly if Newfoundland be one of them. Our respective capitals are the two oldest cities of Canada—St. John's and Quebec, St. John's being exactly one hundred and ten years older than this ancient city. St. John's is by far the oldest city of Canada, and by far the oldest city of the western world, having been continuously inhabited since 1498. St. John's has been continually British from that day to this.

Quebec is our nearest neighbour, the only province of Canada that is contiguous to Newfoundland with an invisible boundary about which "the less said the better."

We have, however, a number of things in common with the people of Quebec. We have a peculiar devotion in both provinces to our respective religious faiths. Our people are peculiarly hard-working and frugal. There is a peculiar strength in the home life of both provinces. There is an absence of divorce laws and courts in both provinces. We have virtually the same system of education in Quebec and Newfoundland, and Quebec and Newfoundland share between them that great industrial empire in the northeast corner of this continent.

We were represented at the 1864 conference in this city by Sir Frederick Carter and Sir Ambrose Shea, two of the original Fathers of Confederation, but one thing that binds us more closely than any is a fact which was first brought to my notice, and to the notice of all Newfoundland, by a very great French Canadian historian who was at the time chief archivist of Canada, Dr. Gustave Lanctot, and I quote him as sufficient authority for the authenticity of this account. It was when the United States invaded Canada with two armies, one

of which marched up through New England, and across the river at Levis; the other came down through a more westerly part of Canada conquering as it went—conquering and possessing Toronto and Montreal on through to the free walls of Quebec. Montgomery and Arnold were to meet here to make the final assault on the last stronghold of British Canada which was left—the city of Quebec. Sir Guy Carleton had his army completely wiped out; he had fled down the river by canoe and landed at the city of Quebec where he gathered a few hundred troops, the only British army left on this continent. Less than three hundred men gathered in the city of Quebec when the two armies met under these walls. The position seemed to be so utterly hopeless that the citizens of Quebec met and passed resolutions demanding that the city be surrendered without further delay to the Americans to avoid needless slaughter. At that very psychological moment there arrived up this river from Newfoundland two schooners bearing with them 130 very sturdy Newfoundland fishermen who had been recruited as soldiers by Captain Colin Campbell who went there for the purpose. It was the fortuitous arrival of those 130 Newfoundland fishermen who joined the 200 or so Canadian soldiers stationed in Quebec, who turned the tide, who changed the minds of the citizens of Quebec as they marched ashore and through those streets to join the Canadian army, and a day or two later were in the vanguard of the battle with the Americans, which ended in the destruction of the American army, the success of the Canadians, the preservation of Quebec, the preservation of the Union Jack and the preservation of Canada, all attributable to 130 Newfoundlanders.

If these historical facts do not bind Quebec and Newfoundland together intimately what possibly could bind any two provinces?

We Newfoundlanders who are here are sitting at the feet of ten Gamaliels as students, learning, listening and pondering, and trying to make up our minds. We have two desires: one, that our ancient title of Britain's most ancient and loyal colony, and all that it means in sentiment and loyalty, be preserved; and two, that in joining Canada we joined a great nation, and we should like to see both preserved. For that reason I think we should like to see the suggestion of Mr. McNair made in January, and so very powerfully supported today by Mr. Duplessis, for an all-Canadian constitution written in Canada by Canadians for Canada, carried out. We should like to see that. We certainly did not join Canada to join a disunited nation. We joined because we felt that Sir Wilfrid Laurier was right when he said that the twentieth century belonged to Canada.

We want to be proud of Canada as a whole. We want to be proud Canadians while we remain proud Newfoundlanders and also while we remain Britishers and loyal to the King. Whether both can be done or not, I do not know. I do not presume to guess.

I must say also that we feel quite strongly with Mr. Douglas on the point he made. We are willing to have, in fact we insist in so far as we can insist that certain things be—if the word is "entrenched" that they be entrenched.

In Newfoundland we have a system of education which will remain, or we do not remain. I do not know how we would get out, but we will have our system of education while we are in confederation. And whatever is the best way to entrench that, to guarantee it so that it can never be changed except by our consent, that is what we want. However that can be done that is what we want done.

We are willing to go along also and be equally insistent that the two languages be equally entrenched, and certain other of the fundamental problems. I suppose you might call them; but when you get in another field we do not want to find ourselves in this position, that if a majority of the people of Canada want social security on a national scale any one province can stop it. The one province that would stop it obviously would be the least progressive of all ten,

[Mr. Smallwood.]



and we do not want any one province with the right of veto in such a field as that of social security, on which we in Newfoundland have very strong views and which we desire very much to see carried out in Canada. Therefore we are with Mr. Duplessis 100 per cent—I believe we are—on the matter of an all-Canada constitution, and with Mr. McNair. I think we are 100 per cent with Mr. Douglas in his determination that no one province shall make it impossible for an all-Canada national scheme of social security to be carried out in this nation.

How it is all to be done is a matter for the lawyers of whom there are some very brilliant examples around this table and sitting around this chamber. In that I would not presume to offer any suggestions or any advice.

We are still learning. We think we are learning from great masters. There is only one thing left to say. It was put in my mind by Mr. Manning who said just before he sat down: when was there a better time, when is there likely to be a better time to have the right constitution for Canada? A most superficial reading of Canadian history shows that at one time or another Canada has been rent apart by issues that aroused passions throughout the country. It is quite a while since there has been such an issue in Canada. To a newcomer at any rate there seems to be more unity now and more absence of passion-giving issues than for many years past, which ought to argue, I take it, that now is the acceptable time to do those things of which these distinguished Canadian statesmen have been speaking here this afternoon.

The CHAIRMAN: Perhaps we might rise at this time to meet at 10.30 tomorrow morning.

At 5.05 p.m. the conference adjourned.





## CONSTITUTIONAL CONFERENCE OF FEDERAL AND PROVINCIAL GOVERNMENTS

TUESDAY, September 26, 1950

### MORNING MEETING

The Conference resumed at 10.40 a.m., Right Hon. L. S. St-Laurent, Prime Minister of Canada, in the chair.

THE CHAIRMAN: Gentlemen, if such is your pleasure we will come to order. Yesterday we heard very interesting statements from the Premiers of the ten provinces. I listened to them with much interest, but as I listened I became more and more convinced that the next step we must take is to try and determine some procedure whereby changes, if changes become necessary to the Canadian constitution, can be made. When that point has been reached I think that most of the other desires expressed by the Premiers will also be met.

Of course there has always been this controversy as to whether our constitution was founded upon a compact or on some other basis. Theoretically it rests on the legislative power of the parliament at Westminster; but if we were able to devise a method whereby we felt satisfied that such changes as circumstances might require could be made under some practical system of procedure, then I do not know that anyone could object to basing the Canadian constitution for the future at least upon agreements between the federal government and the ten Canadian provinces. That would possibly satisfy this aspiration of Mr. Manning to have a constitution that the people would feel was theirs, and in which they would feel that all the organized bodies, whether national or provincial, had an equal interest.

But when we do make the constitution a compact, no one wants that compact to be infringed in any way. There would have to be some procedure within the compact to provide for such changes as circumstances might afterwards make desirable in the common interest of the people who would be living under that constitution.

If we can successfully accomplish the task of providing satisfactory machinery to bring about such changes as future circumstances might make desirable, I am sure we can then agree on most of the points that appear to have been at issue between us up to the present time.

At the present time probably there are features in the constitution that representatives of the provincial governments feel should be altered. For instance, with respect to the composition of the houses of the Canadian parliament, some of the representatives of the provinces have expressed the view that they have an interest in any modification that might be made there. Under the present system, through addresses from the Senate and the House of Commons, changes can in fact be brought about without reference to the provinces; but, if there was a tidy system whereby such changes as may become desirable could be made, I think that the federal authorities would feel that they would not be betraying any of their responsibilities by some form of entrenching the rights of the inhabitants of the several provinces in the composition of the central organ.

There are other similar matters which I think it would be relatively easy for us to agree upon, provided that there were methods whereby we could feel that our successors, if they came to the conclusion that the interests of the nation required some change, could make that change. Therefore I have been more and more convinced that our next step must be to try to work out some

formula which would be incorporated in the present constitution and would be transferred to whatever new constitution replaced it, to provide for the changes which the circumstances of the changing world may from time to time or at any time make desirable in the common interest of all the people. We would be proceeding in a logical way if we attempted to deal with that problem at the earliest possible moment.

Hon. M. DUPLESSIS: Monsieur le président, MM. les premiers ministres, l'attitude de la province de Québec est très claire. Nous voulons coopérer amicalement sur des bases fondamentales intangibles. Ceci ne veut pas dire que nous ne reconnaissons pas qu'il soit désirable de faire des modifications à la constitution actuelle. La tradition n'est pas opposée au progrès. Les traditions de la province de Québec sont immuables mais elles ne sont pas immobiles.

Je crois qu'il convient de bien réaliser la situation. Il ne s'agissait pas, lorsque la Confédération a été décidée, simplement d'une entente entre quatre provinces pionnières. C'était surtout et d'abord une convention entre deux grandes races dont les traditions et la culture procurent au Canada d'énormes avantages que ne possède aucun autre pays au monde; des avantages qui, loin de l'appauvrir, enrichissent considérablement notre pays. Ces traditions fondamentales nous y tenons, c'est notre devoir d'y tenir et c'est notre droit de les conserver.

Évidemment, ça ne coûte rien de disposer de la propriété de son voisin. Ce n'est pas difficile de faire une entente en vertu de laquelle la propriété du voisin va être partagée, mais ce n'est pas conforme à l'essence même de la constitution canadienne. La constitution canadienne consacre certains principes que nous considérons inviolables, mais comme tous les actes humains, elle est perfectible.

Les premiers ministres de quelques provinces ont exprimé l'opinion que notre constitution, en particulier en matière de droit civil et de droit de propriété, est trop rigide. Cette clause de la constitution a été décidée après mûres délibérations de la part des représentants des quatre provinces pionnières appartenant à différentes races, différentes religions et qui en sont venus à une entente d'une façon raisonnée et raisonnable. Il est impossible de respecter comme il convient les droits des deux grandes races sans en même temps respecter les traditions fondamentales des deux grandes races dont la coopération est essentielle au progrès du pays et au bien-être de sa population.

De toute évidence la sauvegarde et le respect des traditions fondamentales dépendent en bonne partie, pour ne pas dire uniquement, des moyens d'action ou des possibilités financières de réalisation.

Tous, unanimement, déclarent être en faveur de l'autonomie provinciale. L'autonomie voulue par les pères de la confédération et pour les deux grandes races qui l'ont établie, n'est pas une autonomie verbale mais une autonomie en droit et en fait. D'aucuns sont d'opinion qu'il faudrait modifier des articles fondamentaux parce que, disent-ils, leur province n'est pas riche et ces provinces désirent certaines législations sociales. Il ne faut pas réduire ces questions à des problèmes matériels seulement, à des problèmes d'argent. La législation sociale comporte des éléments basiques qui touchent profondément aux traditions, aux habitudes, aux "ways of life".

La législation sociale est basée sur des traditions que nous considérons essentielles.

En ce qui concerne la province de Québec nous avons toujours fait notre large part: dans le domaine des pensions de vieillesse, dans le domaine des écoles spécialisées, dans le domaine de la pension aux aveugles, nous avons loyalement et généreusement coopéré. Nous sommes toujours prêts à coopérer; la coopération n'est pas une rue à sens unique; elle ne consiste pas dans la volonté d'une

[Mr. St. Laurent.]



partie à coopérer et dans le simple désir de l'autre à recevoir. Il n'est pas juste de nous demander d'abandonner nos garanties de vie et de survie ethniques; l'argent ne peut jamais les remplacer.

Dans la province de Québec le système d'assurance-santé comporte des traditions religieuses et nationales auxquelles nous tenons résolument. Ce système ne convient peut-être pas à toutes les provinces mais il nous convient entièrement et nous y tenons. La province de Québec possède le droit exclusif de légiférer en matières de professions libérales, en matières de système d'éducation qui forme les professions, les métiers et les occupations. C'est un droit que nous considérons essentiel et sacré et que nous ne pouvons pas décemment abandonner. Il est possible de chercher et de trouver une base d'entente respectueuse des droits essentiels de tous et chacun, et tenant compte de toutes les circonstances. Il nous fera plaisir de rechercher et de réaliser cette base d'entente.

Quant à nous, la première chose à faire c'est de domicilier la constitution chez nous.

Il y a certains principes qui nous paraissent absolument intangibles pour la conservation de nos traditions essentielles. Nos traditions ne sont pas un obstacle au progrès. Loin de là. Les traditions de la province de Québec ont contribué et contribuent puissamment au bien-être du pays, à son progrès et à sa prospérité durables.

Tous et chacun, j'en ai la conviction, sommes prêts à faire d'autre chose qu'à diviser la propriété du voisin, mais plutôt à s'entendre de part et d'autre pour trouver une formule de compromis qui, sans être intolérablement compromettante, soit juste, équitable et appropriée. En y mettant raisonnablement chacun de sien, nous avons lieu d'espérer arriver à une entente foncièrement canadienne.

Since the beginning of this conference, Mr. Chairman, the Prime Ministers of the different provinces have expressed their views. I need not repeat what I have stated time and time again, namely, that the province of Quebec is sincerely desirous to co-operate with our fellow-Canadians. We are anxious to find a sound and fair basis of understanding, but we do not think that we should start from the principle that those who do not possess should be called upon to decide single-handed what will be given by those who possess. By the same token it is the duty of those who possess in this great confederation of ours to be mindful of their obligations as Canadians and to help those who do not possess.

When confederation was decided upon eighty-six years ago certain fundamental principles were firmly established. We were to live under a federative system, not under a centralized system. The governments of the provinces and the government of Canada were to be responsible governments; that is to say, these governments in their own spheres were to have, to possess and exercise, and be in a position to exercise, all the attributes indispensable to responsible government, namely, legislative, administrative and fiscal attributes.

It is all very well to say that we are all in favour of provincial autonomy. Provincial autonomy are pleasant words to hear, but in fact they are meaningless if they are not accompanied by the legislative, administrative and fiscal powers essential to a responsible or democratic government. I remember that a few years ago a friend of mine, who was working in the Post Office Department, got married and his friends decided to give him a wedding gift. They passed around a subscription list. One subscribed \$5,000, another one subscribed \$10,000 and another one \$20,000, and so on. When the list was completed the groom-to-be got the list but no money. He just received a declaration. Rich in friendly sentiments but most useless to all intents and purposes. We are very glad to look at the list, but living on earth we need the money. The province of Quebec has shown more than once its friendly desire to co-operate.

Everyone is speaking of social security. As a matter of fact there is no one against real social security. Real social security cannot exist unless it is based on stability, on solidity. Justice and common sense establish a limit to social security based on the property of one's neighbour. Such a policy is devastating; furthermore, the disease becomes contagious and then the neighbour himself is looking for social security with the result that instead of having security—an essential corner-stone—we have ruin and disaster.

We have proved more than once our desire to co-operate. We have adopted enabling legislation for old age pensions. We are willing to enter into an agreement with Ottawa to improve old age pensions. We are willing to consider extending the benefits of old age pensions. We co-operated with Ottawa in the matter of pensions for the blind and we are willing to improve those pensions in co-operation with Ottawa. Quebec is willing to do its share in a sensible and generous manner in order to provide Canada with the best possible real social legislation. But social legislation is not only a matter of money. There is something else and very important besides money in social legislation. There is the spirit, the foundation of philanthropy, the foundation, if I may say so, of brotherly charity that is interpreted differently in different quarters.

In the province of Quebec we may have certain views to which we are entitled. Other provinces may think otherwise and it is their right. We can discuss these problems together and arrive at a fair and sound settlement of these divergent views. In fact this is what we did more than once.

In the field of specialized education we co-operated in a friendly way with Ottawa. In the matter of health Mr. Martin will admit that we co-operated in a friendly manner, a loyal manner too. In this important domain of health, there is something else besides money involved. Fundamental principles and traditions are involved.

In the province of Quebec we have a system of hospitalization to which we are firmly attached. It may not be suitable to other provinces. We respect these opinions but we think that our opinion should be respected too and should be taken into consideration. Before arriving at an agreement with Ottawa it is only common sense and elementary justice that we know what the agreement is to be. I understand, Mr. Chairman, that it is a very important principle of the Liberal party not to give blank cheques, and I do not think it would be fair to ask the provinces to give a blank cheque in connection with social legislation.

Let the federal authorities and the other provinces suggest specific, definite social legislation. We would then be willing to consider it in a friendly way and also to co-operate, if appropriate and adequate. But if we are to have provincial autonomy then I venture to say that it cannot consist only in sitting in a car, paying for the gasoline, the expenses and letting the other fellow drive the car. This would be not only dangerous but most illogical, to say the least. I do not think anyone would be satisfied with an agreement stating that he would be responsible for all the damages caused by a car with the control of which he would have nothing to say or to do. Surely our friends are not looking for that. In short, it is possible, it is feasible, and I would say it could be easy for each of us, by understanding the problems of one another, by respecting the fundamental rights of one another, to arrive at a really Canadian agreement based on essential fundamentals.

Hon. Mr. FROST: Mr. Prime Minister and gentlemen: we listened yesterday to the statements of the provinces and the federal government, and various points of view were expressed. I think we all noticed yesterday that in some of the statements made there was perhaps a note of pessimism, although possibly I should not use that word, which arose because of the number of sections that were referred to Appendix 3. That is the appendix dealing with matters

[Mr. Duplessis.]



about which there was no agreement. Personally I do not share that pessimistic point of view at all. I think, as I will say in a moment, that that appendix is a receptacle for a great many things over which there may be doubts, and were doubts in the minds of the members of the sub-committee.

In a very large number of cases, however, I do not think that they are matters of very great substance, and I think that they can be very easily resolved. I think perhaps we might get back to the original purpose of this conference. It seems to me that this is the situation—and I say this with all respect for others who have perhaps expressed some notes of difference on this point: in Canada we find ourselves in the position that we have no powers to amend certain portions of our constitution. By reason of an Act passed in 1949 by the British parliament, the federal government in certain matters now has that right. There is a very large and important residue in our constitution where we have not that right.

We have all agreed that we should have that right. It is not consistent that a great and important nation such as Canada, growing in importance every day of the week, should not have that right. It has been felt that as Canadians we should get together and find a method to amend all features of our own constitution in Canada. The British parliament and the government of Great Britain have expressed the view that the present situation is an embarrassment to them. Again it is not in keeping with a country of the influence, power and importance of Canada to be in this position.

I think it is true, Mr. Chairman, that in matters of joint interest between the federal and the provincial parliaments, actually the provinces—and we might as well recognize this—have very little protection. That has been discussed academically in parliament and has been discussed here. The fact is that the parliament of Canada, as it now stands, without consulting the provinces at all may make an address to the parliament of the United Kingdom. The history is that the parliament of the United Kingdom has always done what the parliament of Canada has asked it to do. Let us be reasonable about this matter. If we are not consulted at all and there is something of very fundamental importance, what would the parliament of the United Kingdom do? All I can say is that in the past they have always done what the parliament of Canada has asked.

It seems to me that at the moment the provinces have very little, if any, say with respect to amendments to the constitution. Perhaps that may be over-stating the case to some extent, but academically that is true, and in practice it has been true. It seems to me that if we can solve that question in a reasonable way and can provide a method of amendment of our constitution, then we can proceed to deal with problems of amendment. Problems of amendment have been discussed around this table yesterday and today. These problems of amendment can then be dealt with provided that the machinery we adopt here is such that we can deal with them.

As to the matter of a new constitution—perhaps I am wrong in saying a “new” constitution but in any event a Canadian constitution—if we can amend our constitution then it seems to me that we can go ahead and adopt a Canadian constitution, and I think that the views expressed by the premiers of Quebec, New Brunswick and Alberta would be widely accepted in Canada. After all, if we have the right to amend our own constitution it means that the constitution is ours, and that therefore we can, by the machinery set up, adopt a constitution in Canada which is purely Canadian. With respect to that view, it may be to a certain extent academic, but nevertheless if there is importance attached to it I certainly would not object to it.

In tackling the problems confronting us, first of all if we are going to do these things we surely have to find a way to amend our own constitution. It seems to me that first of all we have got back to what appeared to me to be a note

of pessimism as expressed yesterday because of the number of subjects referred to Appendix 3. Let me say that I think we over-estimate the importance of the number of subjects referred to Appendix 3. Remember, that appendix is the receptacle for a large number of things, not only things that some of us may count as fundamentals, but a receptacle for all manner of doubts that arose as to where a section should go.

One only has to look at Appendix 3 to see the nature and extent of that. In the appendix there is not any pattern of opposition on the part of certain of the provinces and agreement on the part of the others. The whole set-up of the appendix shows the independence of views of the various provinces and parts of Canada. For instance, if we take section 121, you will notice that the federal government and most of the provinces think it should go under item 5. Quebec and Saskatchewan, however, think it should go under No. 4. That is also true of section 108. Nine of the governments think it should go under No. 1; one says under No. 3 and the other says under No. 4.

Our point yesterday in connection with a formula was simply this. Many of these opinions, as indicated in Appendix 3, arise because of honest differences of opinion from a purely legal standpoint as to under which heading it falls. In proposing our view that we leave these matters either to agreement or to the courts, I may say that we have this precedent. The federal government itself followed that course in the Act of 1949 when it asked and received power from the British parliament to amend matters which were purely dominion in their scope. They did not attempt to define what was purely dominion. They said if there are doubts as to anything that we want to do then the courts can decide. It seems to me that principle would resolve the great majority of the cases in Appendix 3. That was the purpose in formulating the idea, that many of these differences are differences as to legal interpretation, and it is very difficult to get unanimity on legal interpretation even in the courts themselves.

We have a system by which differences in legal interpretation are resolved and decided in the end by the courts after hearing the arguments of all parties. Therefore I think that most of Appendix 3 fades away if we have a formula of that sort.

With regard to fundamentals, a number of Premiers mentioned yesterday that we had to give some guidance, that we could not leave the whole interpretation of matters to the courts. I agree with that. We have to decide here what are the things that are entrenched and are fundamental. We have to decide that. I think it is unanimous that we should protect certain fundamentals, the use of the French and English languages, the school laws and the amending procedure. There is no argument there. There is an area of course where there would be arguments on both sides. Let us not be too adamant. Let us hear the arguments of everyone and see what can be worked out in that regard.

Yesterday Mr. Campbell referred to something that we said at the opening conference, namely, that the procedure should be rigid enough to protect minorities but flexible enough to meet the needs of a great and growing country. That is our position. I think that must be the position. After all, that is what we all want to do. We want to see our country grow and prosper. We want to see that our constitution is such that it meets the needs of all interests in our country, and at the same time meets the needs of a great and growing country.

Mr. Chairman, might it not be well at this stage to go into a committee of some sort, perhaps a committee of the whole composed of the premiers and their advisers. If the matter is referred, for instance, to the attorneys general themselves, I think they may feel, as they felt in the last committee, that there are certain things that really should be determined by the governments themselves rather than by the attorneys general. In discussing the matter with my colleague, Mr. Porter, I think he felt many things went into Appendix 3 not because there

[Mr. Frost.]



was any fundamental disagreement between members of the committee but because they thought those matters should be decided by the governments. Therefore that has put more subjects into Appendix 3 than perhaps might otherwise have been the case.

I offer this suggestion for consideration. I hesitate to make a motion which you might feel represented our unalterable view because after all we are here to deal with our partners in confederation. Again I come back to the conference held in this great city in 1864. No doubt there was a great deal of give and take at that meeting. There must have been, to arrive at seventy-odd resolutions, and to arrive at the basis of the B.N.A. Act. There must have been a lot of give and take, and therefore we want to be in that position here. I offer this motion for the consideration of the conference:

Whereas in the discussion at the Plenary Conference of the report of the Committee of Attorneys General, certain delegates have advocated that the B.N.A. Act be replaced by a new constitutional statute drafted pursuant to an agreement between the federal and provincial governments of Canada, to be subsequently passed by the federal parliament and the provincial legislatures under powers granted by the parliament of the United Kingdom;

And whereas for the protection of the rights now enjoyed by the provincial legislatures and the provincial governments of Canada under the B.N.A. Act, it is essential that such new Canadian constitutional statute shall contain adequate provisions for its own amendment;

And whereas this Conference considers it desirable that agreement should first be reached on such amending procedure;

Therefore be it resolved that a Committee of the Whole be formed to consider and report back to the Conference such amending procedure and if possible to propose a method for the drafting of a new Canadian constitution to be enacted by the parliament of Canada and the provincial legislatures, such new Canadian constitution to be a consolidation and revision of the B.N.A. Act and amendments, and

That the said Committee consider and report to the Plenary Conference,—

(a) In connection with category (4), what number of provinces and what percentage of population, if any, should be required to authorize legislation by the parliament of Canada amending provisions within the said category.

(b) What provisions of the B.N.A. Act should be included in category (5).

The reason for referring to agreement on the amending procedure I think is that until you determine the method of amendment I do not see how you can agree on the other problems.

In the first draft of the resolution I did not include "a Committee of the Whole," but for purposes of argument I have now included it and you may amend the resolution in that regard if you wish.

In using category (4) I am referring to (4) as in the original meeting of the conference last January. You will recollect that it was the provision that the B.N.A. Act and other constitutional acts be grouped under six headings.

It seems to me that if such a committee were to meet, one of the principal problems would be to decide what items are fundamental. That is contained in the resolution and there are the other items to which I have referred. I make this suggestion, Mr. Prime Minister, as a method of going ahead and making progress. It seems to me again that if we have the broad view that there should be a Canadian constitution, in other words, that the whole of the constitution should be resident in Canada, that can be done, provided we can find the

machinery to amend. I am quite in agreement if it is felt by this conference that as part of the arriving at machinery-to-amend we should bring the constitution over here. If that is so, I am all for it, and it is the purpose of this resolution.

Mr. DOUGLAS: Does Mr. Frost have extra copies of that resolution?

Mr. FROST: We have a few here.

Mr. DOUGLAS: Perhaps we could have some run off.

The CHAIRMAN: Gentlemen, it will take a few minutes to have copies of the precise text run off. Are there any other members of the conference who would like to express viewpoints on the general principle of having a committee either of the whole or of the Premiers, attorneys general and their advisers, meet to discuss the possibility of working out some form of amending procedure?

Mr. MANNING: Mr. Chairman, I wonder if Premier Frost would clarify this one point? I am not sure from what he is suggesting if this committee of the whole or any other committee would, in its establishment, presuppose a private session; or would it be a public session? If it is a committee of the whole to discuss the matter here, what difference is there from what we are doing now?

Mr. FROST: I have not said anything about that, Mr. Manning.

The CHAIRMAN: I would imagine that if the work is to be accomplished by that kind of a committee, there would be apt to be views put forward which would not be the final views that would persist at the end of the deliberations. It might be more convenient for that kind of a committee to operate as did the attorneys general, *in camera*, where people would feel freer just to think out loud with the reservation that even their form of thought might be subject to modification.

Mr. McNAIR: It occurs to me that if the matter is proceeded with on that footing the committee will find itself faced with the situation which developed with the standing committee set up in January last. Our work would be circumscribed within the terms of such a resolution as has been proposed. We do not know what turn the discussions might take. The suggestion advanced by the Premier of Ontario appeals to me very fully but would it not be better for this conference to go into private session and take the matters up as the discussion may lead. I think this is a very important question which has to be decided and I do not think we can do any better than go into private session and carry on in the full way.

The CHAIRMAN: I presume that would not be objected to by Premier Frost. The effect will be the same whether this committee of the whole discusses matters *in camera* or whether the conference resolves itself into a committee and works *in camera*. The practical result is just the same. It may have the advantage of not putting any limitation upon the field that might be covered by the discussions that would take place *in camera*.

Mr. DUPLESSIS: As far as I am concerned, I would like to have a copy of the resolution or motion or suggestion.

The CHAIRMAN: Copies are being made.

Mr. DUPLESSIS: It is important because my experience is that sometimes there is wide difference between what is written and what is said. I do not mean to infer by that that anyone should be of the opinion that the Premier of Ontario did not write the facts, far from it, but the wording sometimes is important and I would like to look at that wording.

[Mr. Frost.]



As far as we are concerned in the province of Quebec, we favour public meetings, but if it is deemed more profitable for the success of the conference to have another kind of meeting we won't raise any objection. We are willing to co-operate. If it is the opinion of the Premiers here that more work would be done *in camera* it is all right. We have no objection to working publicly and we have no objection to abiding by the decision of the Premiers if they decide it would be more profitable to go into *camera*. We are going to read the wording of the resolution to see what it means.

MR. CAMPBELL: Mr. Prime Minister, before the legal talent that is here present becomes involved in discussion of the finer points on this motion, which I am sure will become more confused after they receive the document, it might be well for a layman to explain it carefully so we can expedite discussion of it when the actual text arrives.

Subject to revising any opinions I might express when I have had an opportunity to look at the text, I would like to begin by complimenting the Premier of Ontario on his very co-operative stand with regard to the objectives of this conference, and on a concrete proposal that he has made. I think that is what we require most of all here—to have some concrete proposal we can discuss rather than continuing to speak in generalities. I think this is the way that we will make some progress, but I gather, in looking at the terms of reference, that he placed discussion regarding a constitution domiciled in Canada in a primary category among the duties of this committee of the whole. Certainly it was the first thing he mentioned; I heard it right after the “whereas” clauses and I would not think that would be his own intention from the remarks which he made.

I would think that the terms of reference that the Premier of Ontario gives to that committee of the whole are all the terms of reference that are before us now, plus that one other very important matter, the writing of a Canadian constitution. It seems to me, and I am quite in favour, that it is the feeling of the conference that it would be expeditious to have a committee carrying on the work. I think it should be made clear that the committee should first of all address itself to the practical question of deciding that the writing of a Canadian constitution, though desirable of course—unanimously desired by the delegates here—can be and should be deferred until other matters are decided. I would list as one, not necessarily the most important, but one that needs to be decided first, “What is the majority that we are going to use in category (4)?” I am glad to see that the point is mentioned in the resolution.

The other important point is the definition of the fundamentals that are to be incorporated in schedule or category (5). I think if we would work diligently on those practical questions first that we would get farther than by attempting to discuss the question of a constitution completely domiciled in Canada.

It seems to me if this conference would tackle the larger and broader question of the Canadian constitution first, it would definitely find it more difficult to decide, as compared with the method of amendment that we are all primarily here to discuss.

So, believing that much can be achieved by a committee such as suggested, and being particularly anxious to get along on some practical ground that offers us opportunity to expedite matters, and always subject to looking at the text of the resolution itself, I would think that we would be inclined to support the motion with the qualification I mentioned; that we feel these two matters should be tackled as ones that the conference can make greater progress on, rather than by dealing first with the question of a constitution completely domiciled in Canada.

MR. SMALLWOOD: Mr. Prime Minister, I have not heard a word expressed at all here against the idea of an all-Canadian constitution. I am inclined to feel

that there is agreement on the desirability of an all-Canadian constitution. In the absence of any word against it, it might be reasonable to assume that everyone feels, as Mr. McNair and Mr. Duplessis do, that we ought to have a constitution originating in Canada. Might we not, in going into the committee suggested by Mr. Frost, assume and agree that the step for which this conference was called, the step of finding final agreement on the method of amending the constitution, is the first step taken toward an all-Canadian constitution; and that of the two things, finding a new constitution—not exactly a new constitution but a constitution for Canada originating in Canada—and then the finding of a formula for amending the Canadian constitution, the greater of the two is the latter. That having been done the main step has been taken, and the minor step remains. That in turn calls for one simple thing only—someone to change his mind or some number of provinces to change their minds on this list on which agreement up to now has not been found. We can change our minds more readily in private than in public. To what extent Newfoundland has to change its mind I do not know; frankly the attorney general will have to tell me that. In connection with the list that has not been agreed upon, Appendix 3, I do not know where we have exceptions, if any. We are with the majority. All we can do is help to persuade the minority. If we are in the minority anywhere we shall try to get into the majority—in private.

Hon. Mr. DOUGLAS: Mr. Prime Minister, I think that Mr. Frost's suggestion follows a very logical sequence, subject to having an opportunity of examining the text more closely. I think it meets most of the points of view that were expressed yesterday. Quite a number of provincial premiers have expressed the feeling that we ought to have a Canadian constitution. Yet, at the same time, it is recognized that this conference was called originally to devise, if possible, an amending procedure, and this particular session was called to receive the report of the committee of attorneys general which has done some preliminary work on that question. That report is now before us. I think everyone feels that it would be the height of folly simply to discard the report and start on the much bigger question of the Canadian constitution and thereby leave undone what is a very important question, namely, the question of the amending procedure which we must have if we are to have a Canadian constitution.

Therefore I think that Mr. Frost's suggestion is a good one. As I remember the third "whereas" in his motion it was that this conference considers it desirable that agreement should first be reached on the amending procedure. That is the first thing that has to be done. I take it he is suggesting that for the moment we should leave out the question whether it be a committee of the whole or this conference. I think the order he has suggested is an admirable one, namely, that first of all we seek to work out together and find agreement on an amending procedure; second, that we try to devise or report on some method whereby a Canadian constitution could be domiciled in Canada, based on the present British North America Acts and related documents, and also that we try to come to some conclusion with reference to what is meant by Category (4) and what is meant by a majority of the provinces. There should be some definition of the term, whether it is to be more than 50 per cent, or whether it is to be two-thirds, or whether it is to be a majority of the provinces representing a majority of the population. That has to be determined before you can say what particular things you are going to put into that category. Then his fourth step is this. I take it he suggests that we should also seek to decide and find agreement on what items will go into Category (5). That is the entrenched clauses. It seems to me that that is a very logical sequence.

Leaving out the question for the moment as to whether we should do it in public conference or in committee of the whole or a select committee—we can

[Mr. Smallwood.]



go into that later—the motion follows a logical sequence, and I think it would be an admirable form of procedure for us to follow.

Hon. Mr. MANNING: Mr. Prime Minister, there is one phase of the proposal by Premier Frost that we should consider a little further. The effect of the motion as it now stands would be to restrict the discussions. Whether it is in an *in camera* session or here publicly, or in whatever committee is agreed upon, it would restrict the discussions to the specific matters enumerated in the resolution. The general feeling, as expressed today at the conference, seems to be that we should not tie our hands within any restricted framework. It would seem to me that our objective would be better reached if we had a simple motion to the effect that we resolve ourselves into a committee of the whole and go into an *in camera* session without restricting the subject matter that we are going to discuss.

For example, this motion refers to provisions of the British North America Act which should be included in Category (5). But there is considerable difference of opinion as to the subject matter that should go into some other categories, and I am quite certain that the intention was not to restrict our discussion of these matters by specifically referring to what subject matter should go into Section (5). Therefore I would suggest for the consideration of the proposer of the resolution that it would be preferable to have in place of this motion a simple resolution to the effect that we resolve ourselves into a committee of the whole. The reason I feel that is advantageous is this: much of this work was done by the committee of the attorneys general, and it would be to the advantage of the conference if they were included in the discussion. That could be done by making it a committee of the whole including the attorneys general as well as the Premiers. If we do it that way we will not restrict ourselves to the specific terms of reference, but would leave it open to discuss any relevant matter that bears on the general subjects of the resolution.

The CHAIRMAN: How would it be, Mr. Manning, if we retained this resolution, because it does put in a concrete form many of the things to which we shall have to give special attention, if in the resolving clause which now reads:

Therefore be it resolved that a Committee of the Whole be formed to consider and report back to the Conference such amending procedure and if possible . . .  
and so on, after the word "formed" we inserted the following words:  
. . . to consider the whole problem for which this Conference has met and specially, but without restricting the general reference, to consider and report back . . .

Hon. Mr. MANNING: I guess it could be argued that the specific matter for which the conference was called was the matter of procedure for amendment. These other matters do go beyond that. I think it is the feeling of the conference that the discussion should go beyond that. If we are to arrive at a conclusion we must be free to deal with all matters that are in any way pertinent to the decision we are trying to reach.

The CHAIRMAN: ". . . Consider the whole problem before the Conference and especially, but without restricting the general reference, to consider and report back . . ."

Hon. Mr. DUPLESSIS: I have just read the resolution. So far as the "where-ases" are concerned, I think the best way to deal with the matter would be to accept the suggestion of Premier Manning, and not be limited by anything whatsoever, but examine the whole problem of consequential matters without

anything previously to that, based on a resolution to confer the right on a general committee to examine the whole problem and make a report.

The first part of the motion is open to discussion and argument. Since we are all looking for as little argument as possible let us have a motion without any preamble stating that the object of the motion would be to consider the whole problem of constitutional matters.

Hon. Mr. FROST: You mean, strike out the preamble?

Hon. Mr. DUPLESSIS: Yes, and examine, as Mr. Manning said, the whole problem of the constitution. If we say we are going to study the matters that the conference was called upon to examine, we may ask what are these matters? There may be some arguments there. If we open wide the horizon of constitutional problems I think it would be better.

Hon. Mr. DOUGLAS: Mr. Prime Minister, I want to suggest that the subject-matters suggested by Premier Frost in his resolution are sufficiently wide to occupy probably a great deal more time than we shall be able to give to this for the next few days. This does not limit the conference, I would suggest, sir. This simply suggests a specific number of problems to which a committee should apply itself. When the committee has reported back on these specific things, namely, one, the matter of amending procedure; two, the matter of the method whereby we can get a Canadian constitution; three, the matter of definition of Category (4) and what is meant by majority of the provinces; four, what items should go into Category (5), the plenary session can then proceed to discuss anything else it wishes, or can set up another committee to deal with other aspects of the problem, or go back into committee of the whole and deal with things that had not been dealt with. But I would submit that these four items suggested by Premier Frost could be dealt with and a satisfactory report brought back signifying a reasonable amount of agreement. If we do that we will have made a great deal of progress. I am afraid that if we go into committee of the whole without any terms of reference we shall simply go round and round like the music.

The CHAIRMAN: I would imagine, Premier Douglas, that if we went into committee of the whole now we would be impressed with the desirability of dealing with these two fundamental matters which have to be disposed of before we can get progress on anything else. If we are able to dispose satisfactorily of these two fundamental matters I am sure we can then, without having to come back to a general conference, go on further and add to the report.

If any members of the conference feel that they would be restricted in committee by having this resolution adopted by the conference perhaps Premier Frost would not insist upon its being adopted. It has been submitted and, being before us when the conference resolves itself into a committee, what will be made is the kind of report the committee can agree upon for returning to the conference. No one would wish any member to feel that he was being restricted by the terms of this motion. I am sure that when we get into committee we will feel that unless we can dispose of this matter concerning Categories (4) and (5) satisfactorily we cannot go any further. Until we have been able to dispose of these matters satisfactorily we cannot make any additional progress.

Perhaps I might be permitted to put Premier Manning's motion that instead of dealing with it here the conference resolve itself into a committee of the whole and report back its progress to a plenary session.

Hon. Mr. DOUGLAS: May I ask what is meant by a committee of the whole? Is it the conference held *in camera*?

The CHAIRMAN: Yes; that the conference resolve itself into a committee of the whole for discussion *in camera*.

[Mr. Duplessis.]



I do not think we need to retain for posterity a record of everything that will be said in the course of the discussion. If we provide for posterity a report of what will have been reached after that discussion then we shall have discharged our responsibility.

Is there any further discussion on that? If not, perhaps I might suggest that unless it is inconvenient we adjourn at this time to meet at 2 o'clock this afternoon *in camera* as a committee of the whole to proceed further.

Hon. Mr. DOUGLAS: To meet here?

The CHAIRMAN: Yes.

Hon. Mr. DOUGLAS: At what hour?

The CHAIRMAN: I do not know whether any of you gentlemen have made any engagements. If not perhaps we might meet at 2 o'clock. By adjourning now we would have the usual two hours and get back at 2 o'clock.

The conference stands adjourned to reconvene as a committee of the whole *in camera* at 2 o'clock.

At 12 o'clock the Conference adjourned.





## CONSTITUTIONAL CONFERENCE OF FEDERAL AND PROVINCIAL GOVERNMENTS

THURSDAY, September 28, 1950

### EVENING MEETING

The conference resumed at 9.10 p.m., Right Hon. L. S. St-Laurent, Prime Minister of Canada, in the chair.

THE CHAIRMAN: Gentlemen, I would call your attention to the fact that although we have just opened the doors to the galleries and the press, the galleries and the space set aside for the press are already well filled. I think that is an indication of the degree of interest of the whole Canadian people in what we have been doing here during the last few days.

I should like to submit for formal approval by the open Conference this statement which it is proposed to hand to the gentlemen of the press if it is formally approved at this session. It would read as follows:

### PRESS STATEMENT

CONSTITUTIONAL CONFERENCE OF FEDERAL AND PROVINCIAL GOVERNMENTS: SECOND SESSION, QUEBEC CITY, SEPTEMBER 25-28, 1950

The Constitutional Conference of Federal and Provincial Governments has discussed at Ottawa and in Quebec City the constitutional position and the procedure by which amendment of the present constitution could be effected in Canada.

The Conference has had a full and frank discussion of the principles applicable to such a general amending procedure and has reached agreement on many of them. Its members are unanimously of the opinion that substantial progress has been made and are exceedingly gratified at the spirit of harmony and co-operation which has been shown by all delegates throughout the whole of the proceedings.

Important sections of the Constitution involving what are considered fundamental and basic rights of the provinces were studied at length and considerable progress towards agreement has been made. Various formulae for amendment were submitted which, while having in view the safeguarding of these basic rights, would assure adequate flexibility in the constitution.

The Conference has requested the Continuing Committee of Attorneys General to study the proposals which it received with a view to arriving at an amending procedure satisfactory to all governments concerned. The Continuing Committee met today in the late afternoon and agreed that the Provincial Attorneys General and the Minister of Justice would exchange views by correspondence leading up to a meeting to be held at Ottawa on November 13, 1950, in order that the matters referred to it might be further considered and a report prepared for submission to a third plenary session of the Constitutional Conference to be held immediately after the Federal-Provincial Conference on fiscal and other matters which is to meet in Ottawa on December 4, 1950.

The Continuing Committee has also been authorized to study the methods and techniques whereby a Canadian Constitution can be domiciled in Canada as a purely Canadian instrument.

Is it agreed that this statement may be handed to the gentlemen of the press as a release from the Conference?

The DELEGATES: Agreed.

The CHAIRMAN: In drafting this statement we have not forgotten, and I reminded my colleagues of, a quip made by my friend, Mr. Pearson, at one time about a press release—that if there had been a press release made at Runnymede it would have been something along the lines that the barons and bishops and King John had met at Runnymede, had had a very frank and full discussion of the proper relations between the Crown and the subjects, and had arrived at conclusions which it was felt would be beneficial.

I do not want to imply that what has already been decided here has the importance of Magna Carta, but I think we have all greatly benefited from the evidence and realization that all those attending this Conference were sincerely desirous of doing everything within each one's power to arrive at the goal of settling in Canada matters of interest to the Canadian public, and that we are determined that those matters will ultimately be settled through institutions responsible to the Canadian public.

It will be noted from the statement that the Continuing Committee is to give further consideration to such conclusions as we were able to reach in our discussions and meetings of the last three days, and to give further consideration to the several formulae which have been suggested, and out of which it is hoped that one will be agreed upon by all of us, without there being any attempt anywhere to impose views that anyone would feel could not in confidence be accepted as likely to operate in a satisfactory manner in all sections of the Canadian population.

We realize that Confederation itself was not achieved in one meeting, but that there had to be time for the representatives who met at Charlottetown, at Quebec and then at the Westminster Palace Hotel in London, seriously to ponder each other's viewpoint and evolve something which would make for a united nation, and not one in which any large section would feel that its rights or its legitimate institutions had been jeopardized.

It is in that spirit that we have been proceeding. I think that having done our best and continuing to do our best, we shall be able to arrive at results which will justify the great, the very kindly and the almost lavish hospitality that the Premier of Quebec has extended to us, his colleagues in the responsibility of administering public affairs in this nation.

Speaking for myself personally, and for my colleagues of the federal government, I would wish to extend to the Premier of Quebec very sincere thanks for his hospitality, for his genial attitude throughout the whole conference, and for having given us a very convincing demonstration that he was like the rest of us sincere in his desire that we succeed in this undertaking.

Hon. LESLIE M. FROST: Mr. Prime Minister and gentlemen, I should like to add a few words of thanks to Mr. Duplessis, his colleagues and the people of Quebec for the hospitality we have received here in this grand old city. This afternoon Mr. Macdonald and I went out for a little ride around the city and its environs. As we admired the historical points of interest we could not help but think of the great traditions associated with this great place.

We saw the oldest house in Quebec which we examined minutely and admiringly. Mr. Macdonald intimated to me that there were some rather old places down in Nova Scotia although he did not say that they were older than the building we saw.

Then we left and went down to the island and admired the beauty of the scenery. Everywhere we went, we had before us evidence of prosperity and progress which interested us very greatly. Of course history and tradition are one factor, but progress is something which is also important. All of this has been most pleasant and most helpful and we thank Mr. Duplessis and his people for their great kindness and generosity.

[Mr. St. Laurent.]



I know that in the last day or two the members of the press have been starved. In fact it might be said that the press have really been abused. They have not been given very much news and I know that that creates difficulty for them. I was interested to note in one or two of the papers that it was stated that I had left Quebec in a huff. First of all, I should like to say that I never get in a huff if I can prevent it, and in any event if I did get in a huff I would certainly never leave Quebec; I would stay right here in Quebec. In fact, I am going to stay here part of tomorrow. Quebec is a great place and I really hate to leave it to go home because there is so much of interest to be seen.

It may be that that story arose from the fact that my colleague, Mr. Porter, had to go back to Toronto to address the graduating class at Osgoode Hall, a class made up of young lawyers who are going out into the world. Both Mr. Porter and myself have been greatly impressed in the last few months with the value of constitutional lawyers and perhaps Mr. Porter felt that in this graduating class there might be a few more for posterity and he thought possibly it was as important as this Conference that he should be on hand to help these young constitutional lawyers on their way. That was the reason for his leaving and I have no doubt it was because he left that the mistake was made in some of the press.

Mr. Prime Minister and gentlemen, in these last few days we have been engaged on matters of great importance to our country. In fact we have been engaged in discussing the basic needs, the basic way of life of our people. In fact, we have been dealing with Canada itself. I do not think the people of Canada would expect us to make shotgun decisions. This matter is too important for that. One has only to consider what we are doing to realize the importance and the involvements concerned with this great matter.

I can say here that in these last few days, and indeed since this Conference convened last January, we have had no disagreements. We have had explorations of the points of view and the problems of others, but that is the way our country was brought about. That is the way the men who met here in 1864 faced the problem. It is a matter of understanding the points of view and the problems of others.

As the press statement sets out, we have made very substantial progress. We are going to make more progress. I think I should express appreciation for the attorneys general committee which has met and which is going to meet again. That committee did a valuable job indeed. We now have clarified a great many things and I do not think it is breaking any secret to say that we have enlarged the scope and authority of that committee. I feel quite sure that when we meet next December we will make, not only more progress but we will achieve the objective to which we have set ourselves, the objective of finding a way to amend our constitution in Canada in a manner which will protect all the minorities, all the races and all the interests in this great country of ours.

I should like also to say just a word of appreciation to you, Mr. Prime Minister. I think you have been a most admirable chairman. You have shown outstanding patience, and patience is a fine thing in dealing with problems of this sort. I know that in voicing appreciation for your very great abilities and your very great patience in connection with this matter I speak for everybody.

This city of Quebec is a remarkable place to come to, especially when we realize that it is the home city of our Prime Minister. I do not know whether Mr. Duplessis will disagree with this, but I think that as the home city of the Prime Minister of Canada and of the Premier of Quebec it is a remarkable city indeed.

Hon. ANGUS L. MACDONALD: Mr. Prime Minister and gentlemen, the Fathers of Confederation who met here in 1864 were able in the space of two

weeks—I think they met from the 10th to the 25th of October in that year—to strike off 72 resolutions which formed the basis of the British North America Act. Therefore it might be felt that we today should be able to devise a method of amending that Act in a much shorter space of time.

But it should be realized that perhaps our task is even more difficult than was the task of the Fathers of Confederation. They came here representing independent governments which had been long established, at least some of them, whereas we come after eighty-three years' experience of federalism. We have met with perhaps certain feelings of doubt, certain feelings of envy and perhaps in some cases, certain feelings of jealousy so that the task of repairing or amending or reforming the original structure is in many ways greater than was the task of erecting it in the first place.

In many respects the British North America Act is a remarkable document. It brought into being for the first time in the history of the empire the idea of federalism which was allied to the theory of parliamentary government as it had been developed in England over the centuries. In that respect it must be held to be a unique document.

Federalism, of course, implies duality of authority. It implies that one government has a certain sphere and certain jurisdiction and that another government has another sphere and another jurisdiction. The task of reconciling those different jurisdictions and authorities is very great and perhaps it has not been made any easier by the lapse of eighty-three years.

It is inevitable that there should be differences of opinion among us. Certainly we would be less than frank if we intimated that everything that had been said here was of one tenor. There have been differences of opinion. Our task and our endeavour has been and will be to reconcile those differences of opinion.

Now, Mr. Prime Minister, without in any way divulging what went on *in camera* or going beyond the words of this remarkable document which will be issued to the press, this most illuminating and enlightening document, I may say that this afternoon I thought I had a remarkable solution to the whole problem. I made suggestions and I could not see why they were not immediately accepted. But they were tabled for consideration which I suppose means that in the usual course of events, some time in the year 2050 my great grandchildren and the great grandchildren of all those here will be considering these suggestions of mine.

I made them in good faith as has everybody who has advanced any suggestions to this Conference. I made them after what I thought was a very considerable exploration of our constitution. While I was disappointed that my advice was not taken I was consoled by the words of Ecclesiastes that he that increaseth knowledge, increaseth sorrow.

However, we are on the right road. We have achieved certain things here. The Continuing Committee of attorneys general, with the Minister of Justice as chairman, will, I am sure, advance still further along that road and when the next plenary conference meets in December I feel sure we shall make still further progress.

We have learned a great deal, Mr. Prime Minister, from our stay in Quebec. I have always been tremendously interested in Canadian history. When the opportunity and time offered I have read all that I could about the history of this country. But it was necessary for me to come to Quebec to find out for the first time that Quebec itself and perhaps Canada as a whole had been saved in by-gone days by people who at that time did not belong to Canada. The fact is according to Mr. Smallwood, that 130 Newfoundlanders are responsible for the whole Dominion of Canada, perhaps indeed for the shaping of the destiny of the whole continent of America. I must say that I have heard some

[Mr. Macdonald.]



people say that if Newfoundland saved Quebec and Canada in those far-off days, the problem today is how to save Canada and Quebec from Newfoundland.

Whatever differences of view we may have on constitutional matters and whatever remains to be settled in that field, there is one point on which we are in complete unanimity. I refer to our feeling of appreciation to the Premier of Quebec, to the Government of Quebec, to the people of the city of Quebec, and I am sure to the people of the province of Quebec for the tremendous hospitality and kindness that has been shown to us.

As Mr. Frost said, he and I took a short trip at the conclusion of this afternoon's session and visited various points of interest in the city. We could not fail to be impressed by the wealth of history that is enshrined here and by the great part the city of Quebec and the province of Quebec have played in the history of the Dominion. It is truly a city of great memories and I am sure that we will all go back home with a fuller realization of the destiny of Quebec and the part that it has played in the scheme of Canadian federation.

Hon. J. B. McNair: Mr. Prime Minister and colleagues, I am glad indeed to have the opportunity to express the great sense of satisfaction and pride that I have at this moment; satisfaction at the course that the proceedings of this Conference have taken, and pride in the spirit that has prevailed throughout our discussions. The report which has just been made public speaks of the spirit of harmony and co-operation which has prevailed, and I think that is putting it very mildly.

We have had much to inspire us and there have also been things that have tended to sober us. What I mean is that we all realize that the job which was undertaken last January by this Conference is going to be done some time. If we of this generation of public men do not do this job, the men of some other generation are going to do it. It is somewhat of a challenge to us to rise to the levels of statesmanship which are necessary to accomplish a task so great.

I said that we have had much to inspire us. I say that, having in mind the position that this country occupies and the position which pertains or exists in Canada. We are unique as a people in many respects. We are unique, although not exclusively unique, in belonging to a great commonwealth of freedom-loving people. We are a member of the Commonwealth of Nations, something that is distinctive in the history of the world.

We are unique also in our relationships with other countries, particularly with the United States of America, to our immediate south. Because of our relationship, because of our position, we perhaps have great responsibilities in the international field. Canada has been well described as the linchpin between the United States of America and the British Commonwealth of Nations. We have a great role to play as an intermediary between that great country and the commonwealth to which we belong.

We are unique in another way, such as was referred to the other day by the Premier of Quebec. We are unique among the countries of the world in that our country is based upon two great cultures and all that is involved therein. We have these things and we have had these things to inspire us. But we have also had to inspire us the surroundings in which we have met.

I want to express what is in my heart and mind at this time. I am glad that we have met here in these surroundings in this ancient and beautiful city with its old world atmosphere. I believe that perhaps one of the best things we have done so far has been to change the venue for this federal-provincial conference. It has brought many of us here who previously have had no opportunity to come as close to the people of this province as we would wish. We have now had that privilege and I think we will all carry away impressions that will mean a great deal in the years that lie ahead in our work in the field of public administration.

I should like to refer again to the atmosphere that has existed in this conference. I think that is due largely to the fact that we have been getting together more and more over a long period of years. I think perhaps that I am the veteran of this conference, at least so far as conferences go. I have been involved in every conference over the last fifteen years. What has impressed me as much as anything else is the fact that there develops among men engaged in this type of work a spirit of friendliness and friendship which I believe goes a long way toward helping them to see the other fellow's point of view and to be able to work with him.

I think also, Mr. Prime Minister, that we have profited much from the guidance and the way in which you have carried out the important duties of your position as Chairman of the conference. In closing I want to add my belief to the confidence that others have expressed that we are going to succeed in this work in which we are engaged. I know I leave here with a feeling that in the not distant future we will reach the goal which we all have in prospect.

HON. DOUGLAS L. CAMPBELL: Mr. Prime Minister, it affords me great pleasure indeed on behalf of my colleagues from Manitoba and myself to join in the expressions of appreciation to our host the Premier of Quebec and his capable colleagues, as well as to the people of this city and of this province who have made our stay here so pleasant, so entertaining and so enjoyable. I do not think we can speak too highly of the arrangements that have been made to ensure that that should be the fact.

I am happy indeed to have the opportunity of expressing these words of appreciation and respect to the Premier of this province because I have the greatest personal regard for him despite the fact that we may have appeared to differ slightly over the connotation of certain words. In spite of everything, I know we are sincere friends. I am happy indeed to realize that despite the present deficiency in his marital status he will go down along with all the rest of us family men as being one of the fathers of re-confederation.

Perhaps I might mention that a feeling has been growing, in fact I think it is increasing all the time, that Manitoba should extend its boundaries. This is a matter which might come under Category (3). I have always felt that perhaps we should stop on the west just a bit the other side of Regina, and until recently I have thought that on the east we should stop just this side of the city of Toronto. However, now I feel that it would be impossible for us to fail to accede to any request to touch a portion of the Province of Quebec. We simply could not leave out this city if we touched Quebec at all, and that would mean coming a considerable distance.

It has been a great pleasure to have had the opportunity of enjoying the hospitality of the Premier of this province and of its people. While this is not the first time I have had the pleasure of being here, I have enjoyed this visit more than any other and I certainly hope we will have the opportunity of coming back here some time again.

As far as the work of the conference is concerned I know that you, Mr. Chairman, and all of us recognize that it would be unrealistic and even untruthful to pretend that we have accomplished everything that we set out to do. On the other hand, and as has been mentioned earlier, we have taken long strides toward reaching our objective. I am one who feels that with a country such as Canada whose tremendous breadth extends for a distance of approximately one-sixth the way around the world, it would be too much to expect that the people from the western shores of British Columbia as well as those from the several maritime provinces could be expected at the present time, or even after a considerable lapse of time, to have a full appreciation of one another's problems.

I am firmly convinced that by meeting together as representatives of governments, federal and provincial, we go a long way toward creating that under-

[Mr. McNair.]



standing of and appreciation for one another's problems that is so necessary if we are to achieve, not only the immediate objectives we have in mind, but a continuing understanding of the problems that face this great country of ours.

I am optimistic and we from Manitoba have always been optimistic as to the eventual outcome of this and other conferences. We recognize of course that we have yet to make major decisions in connection with many important and complex matters. There will be need of some compromise and some adjustments. I have faith that we can in this year, with men produced by this democracy of ours, men who have shown something of the leadership and statesmanship of the people who gathered here in 1864 and again in 1867, finalize these efforts and produce the results that we have all declared unanimously we are seeking.

I want to express again appreciation for the hospitality extended by the Premier of Quebec and for the splendid spirit of co-operation and friendship that has characterized this meeting. You yourself have done an excellent job as Chairman of this conference. I have abiding faith in the fact that we shall not fail in our objective. I want to say that Manitoba will continue to travel the road along with the other provinces in order to achieve the full destiny of Canada.

Hon. BYRON I. JOHNSON: Mr. Prime Minister and gentlemen, may I first associate myself with those others who have spoken in extending to our host, the Premier of Quebec, our sincere thanks for the happy time we have had during our stay in this city. Before overlooking it I should like to express on behalf of Mrs. Johnson—I think I am speaking also on behalf of Mrs. Wismer, the wife of our Attorney General—appreciation for the fine time she has had during our visit here.

I am not going to refer to the various aspects of Confederation that have been covered, but I do want to say that while it has been decided to adjourn this meeting to meet in Ottawa I want to remind you that there is a great place out on the Pacific.

My good friend, the Premier of Manitoba, spoke about the city of Victoria. We do not have the historical background of the city of Quebec, but I do want to suggest that if any further conferences are held, in the future some consideration should be given to holding one in the beautiful city of Victoria. I think it would be a great education for all delegates to travel across this great country of ours and see what is happening on the far shores.

My good friend from Manitoba has decided to take in part of Saskatchewan and eventually the whole of Ontario and part of Quebec. I can tell you that he already has a very fine province without extending its boundaries. As you cross the country you will pass through that great province represented by my good friend the Premier of Saskatchewan. You will see there a great food-producing area. I do not think I need to tell you about the province represented by my good friend Mr. Manning, the province of Alberta. I need say nothing about its wonderful oilfields and the other great natural assets it possesses.

But I can tell you that in the beautiful province of British Columbia on the shores of the Pacific everyone here will really have a good time. I think Victoria would provide a setting for most harmonious discussions of the all-important questions concerning Confederation.

I am going to leave it at that except to say one further word to Mr. Duplessis, the Premier of Quebec. Quebec must be very proud of its historical background and to that history it can add the meetings of this conference.

I think all will agree with what Mr. Frost has said—that we have had as Chairman of this conference a distinguished son of the Province of Quebec in the person of our Prime Minister. As we all know, he is a son of this province and this city. At the same time we have had as host Mr. Duplessis and the members of his government, some of whom come from Three Rivers but who are now domiciled in Quebec.

On behalf of the delegates from British Columbia I want to express our appreciation of your kindness. Speaking for myself as one who is fairly new to public affairs I want to say what a great privilege it has been to come to attend this conference here in this city. May I express again on behalf of our delegates and our wives our thanks for the fine time we have had in the Province of Quebec.

HON. J. WALTER JONES: Mr. Prime Minister and gentlemen, I want to associate myself with those who have already expressed their appreciation of the wonderful visit they are having while attending this conference. I have travelled over your roads for several hundreds of miles and I arrived in your city after passing over the wonder bridge of the world. When I entered your beautiful city I was tremendously impressed with the progress that had been made in all fields since 1912, during which year I was rather intimately connected with your city.

We have been meeting here in your magnificent provincial buildings and I want to express our appreciation for the courtesy extended by all members of the staffs of these buildings.

I want to thank the Prime Minister for the courteous way in which he has conducted the meetings of this conference. I hope that eventually a constitution will be worked out, a written one if necessary, which will provide for all parties in Canada a satisfactory basis upon which legislation can be enacted.

HON. T. C. DOUGLAS: Mr. Prime Minister and gentlemen, I should like to join with those who have preceded me and say on behalf of the delegation from Saskatchewan how much we have enjoyed attending this conference and how pleased we are with the progress which has been made. After all, it is not an easy thing to work out an amending procedure for a federal constitution. We have been concerned here with trying to retain on the one hand sufficient rigidity to preserve our traditions and institutions that we hold dear, and at the same time to create sufficient flexibility in our constitution to enable us to meet the challenge of a challenging world. Both points of view have to be recognized.

I remember when I was in college I expressed some fairly radical views and a professor stopped me in the middle of my statement and said, "Douglas, don't throw out the baby with the bath water." That is always good advice. There are things that should be thrown away and there are things that should be kept. One has to discriminate between the baby and the bath water. One of the things we have to do here is to decide upon the things that are essential and should be retained and the things that can be dispensed with and replaced by better and more valuable things.

I think the success that we have had has been due to the fact that there has been such a fine spirit of harmony. It would be ridiculous to expect that we could meet here from every part of Canada and agree in every particular. We represent different viewpoints; we represent different regional interests; we represent different geographical areas. Naturally we have different points of view. The marvel to me is not that we have differed about some things, the marvel is that we have agreed about so much. I am sure that all of us have been impressed by the desire of every person attending this conference to listen to and to appreciate and try to understand the other person's viewpoint.

In my province the Indians have a saying: "Don't speak about a man until you have walked two weeks in his moccasins." That is what we have been trying to do, to walk in each other's moccasins, to listen to each other's point of view and try to understand the problems we have in our particular areas. When we listen to the other fellow's problems we have a better understanding of the position he takes.

For that reason I think it was wise to hold this conference in the city of Quebec. We are deeply grateful to the Premier of Quebec for having invited

[Mr. Johnson.]



us here and giving us an opportunity to meet the people of Quebec. Most of us have been here before, of course, but usually we were on business and had few opportunities to meet the people of this province. I am Baptist and I am sure there are many of my fellow Baptists who felt that when I came down here I might get into a lot of trouble such as some Baptists seem to get into in this province. But I have had no trouble. Of course I have not handed out any statements to the press. So far I have received nothing but the greatest of courtesy and kindness and on behalf of the delegates from Saskatchewan I should like to thank the Premier of Quebec and his colleagues in the government as well as the people of his great province for their kindness and courtesy.

I speak also of the members of the staff of this building. I have never attended a conference where the arrangements made were any better. Every possible convenience has been placed at the disposal of the delegates and I should like to say how grateful we are.

I am convinced that whatever success we may have had, and I think we have had considerable, is due in no small part to the patience and skilful manner in which you, Mr. Chairman, have conducted these sessions. Your great knowledge as a lawyer has assisted us greatly in helping us to try to find some common ground. I want to join with others in expressing the hope that as we continue these conferences and these discussions we shall eventually work out an amending procedure and it may be that we shall build better than we know.

Hon. E. C. MANNING: Mr. Prime Minister and gentlemen: it would be redundant to reiterate the sentiments which have been so ably expressed during this closing session of the present conference. On behalf of my colleagues from the province of Alberta I want to associate myself completely with those sentiments. It should be recognized by all of us that in dealing with such matters as those which have engaged the attention of this conference you cannot appraise the full importance of the deliberations in the light of the present. Such matters can be properly appraised only in the light of history.

Our concern at this stage should be to make certain that in our deliberations we follow those fundamental principles which will enable future generations looking back at our work through the mirror of history to place their stamp of approval on that which we have endeavoured to accomplish. It has been very wisely said that no problem is ever settled permanently until it is settled right. To settle a difficult problem in a manner that is right obviously requires time. We can learn from the Fathers of Confederation that it is better to take two or three years if necessary in order to be sure that we settle these matters properly rather than to hurry a settlement and sacrifice the soundness and thoroughness that we otherwise would attain.

It is only natural that at times we may be inclined to chafe because deliberations of this nature do require a lot of time, but I do not think we should be discouraged in any way. We have much that should make us feel optimistic as to the ultimate satisfactory outcome of the task to which we have set our hand.

May I express to Mr. Duplessis, the Premier of Quebec, our deep appreciation for his genial hospitality and the many kindnesses which have been extended by him and his colleagues during the sessions of this conference. As we return home from this ancient city so rich in the traditions of the past to our part of this great country that is so rich in promise for the future we will take with us many pleasant memories of the days we have spent in this beautiful city of Quebec.

To you, Mr. Chairman, I extend our sincere thanks for the able manner in which you have presided over this important gathering, and express our conviction that the success which has been attained is due, as already has been stated, in large measure to your wise guidance of the deliberations of this conference.

Hon. J. R. SMALLWOOD: Mr. Prime Minister, the work of this conference in the past four days has been rather onerous, and the gentlemen who have taken part in it can go back to their respective provinces, and the federal ministers can go back to Ottawa, deeply concerned over the work that they have undertaken. It would not be any wish of the Province of Newfoundland that that great burden should be increased by considerations such as the one suggested by the Premier of Nova Scotia when he wondered who would be found in Canada to save Canada, and in particular Quebec, from Newfoundland.

I wish now, speaking as officially as I can, to assure all the provinces of Canada that Newfoundland has no further territorial ambitions. I ask Mr. Duplessis to take particular note of that statement.

Mr. Macdonald, the Premier of Nova Scotia, has introduced something in the nature of doubt as to the historical accuracy of the fact that I cited on the opening day that Canada, and in particular the province of Quebec, was indeed saved to the British Empire of that day, to the King and the Union Jack by the very lucky appearance of 130 Newfoundland fishermen. It has been suggested to me a number of times since I made that statement that it might be a good story but I thought I detected the suggestion that it was a sort of tall tale. Perhaps I could call as evidence a statement made by a very distinguished son of Quebec, a very distinguished Canadian historian, Dr. Gustave Lanctot, former chief archivist, in order to show that this is not a tall tale but is strictly and quite literally true.

I shall go a step further. The other great province of Canada is Ontario. In Ontario they have raised a monument to another band of fighting Newfoundlanders who came to the mainland of Canada in the war of 1812 and fought side by side, I have no doubt bravely, with their Canadian cousins of that day in the defence of Ontario. That monument in Ontario bears irrefutable evidence as to the correctness of my statement.

I am sure it would give us great pleasure before we adjourn to the meeting in December, and I know the people of Newfoundland would appreciate this, if the Premier of Quebec indicated that he was not wanting in his appreciation of the assistance received from the Newfoundlanders and if the finances of the province will not go so far as to permit the erection in this city of Quebec of 130 monuments, at least they will try to see their way clear to erecting one fine shaft in a commanding position to the memory of those 130 Newfoundland fishermen.

If I may be pardoned for striking a personal note may I say that attending this conference has been an extraordinary experience. I am perhaps the only premier of a Canadian province who has had the experience within three short years of at least being present at conferences called to shape two constitutions, one constitution of a province and the other the constitution of a great nation. Not often is it given to any one man to share in two such great and historic occasions.

It has been a great privilege to me, and I know that in this I speak for my colleagues from Newfoundland, to sit in with our fellow delegates on discussions by men who are so well versed in the history of Canada, in the constitution of Canada and in other great and weighty matters. We are able to go back to Newfoundland with a better knowledge of the implications and background of the Canadian constitution, a far better knowledge than we had four days ago.

The Newfoundlanders have been deeply impressed by the unfailing courtesy, the affability, the geniality and the friendliness of the Premier of Quebec. We have been deeply impressed by his friendliness because this is most important to us, as Quebec is the only province that is contiguous to Newfoundland. It is most important to us that our nearest neighbour should be so friendly, so genial, so hospitable. It has been a matter of delight to us

[Mr. Manning.]



to know that in these meetings Mr. Duplessis has been most unfailing in his collaboration in our efforts to arrive at a final solution of these problems.

As for you, Mr. Prime Minister, it makes us proud to be Canadians when we realize that we have in Canada a man such as yourself. We Newfoundlanders were much more reconciled to the fact of union last year when you visited Newfoundland. The like of that visit was never known in Newfoundland since 1497. There has never been a man who aroused such universal, such apparent, such palpable enthusiasm and respect and devotion as you did on your visit last year. Canada must be great in order to have produced such a great man.

We Newfoundlanders, more today than a year ago, and more a year from now than now, are and will be proud of our decision to unite with the other nine provinces of Canada under the leadership of men such as those who sit around this table.

Le PRÉSIDENT: Messieurs, il y aura dans le procès-verbal de cette dernière séance des choses qui seront nécessairement répétées en français. Le communiqué de presse résume les décisions qui ont été prises au cours des séances à huis clos et le procès-verbal ne serait ni complet ni conforme à l'esprit de notre constitution sans le texte français de ce communiqué que je crois de mon devoir d'y faire inscrire, car le français aussi est une langue officielle de la constitution canadienne. Il se lit comme suit:

La conférence fédérale-provinciale au sujet de la constitution a étudié, à Ottawa et à Québec, la situation constitutionnelle, ainsi que la façon dont il conviendrait de procéder pour modifier, au Canada, la constitution actuelle.

La conférence a discuté à fond et en toute franchise les principes applicables à une telle méthode générale de modification, et l'accord s'est fait sur plusieurs points. Les membres de la conférence estiment tous que des progrès considérables ont été réalisés et sont particulièrement heureux de l'harmonie qui a régné et de l'esprit de collaboration dont tous les délégués ont fait preuve durant toutes les délibérations.

Des parties importantes de la constitution portant sur des droits provinciaux que l'on considère comme fondamentaux ont été étudiées et il y a eu progrès considérable dans la voie de l'entente. Diverses formules à suivre pour modifier la constitution ont été soumises, formules qui, tout en sauvegardant les droits fondamentaux, assureraient à la constitution un degré suffisant de flexibilité.

La conférence a prié le comité permanent des procureurs généraux d'étudier les propositions dont elle a été saisie, en vue d'en arriver à une formule de modification satisfaisante pour tous les gouvernements intéressés. Le comité permanent s'est réuni aujourd'hui à la fin de l'après-midi et a convenu que les procureurs généraux des provinces et le ministre de la justice échangeraient leurs vues par correspondance en prévision d'une réunion à Ottawa le 13 novembre 1950, afin que les questions dont il a été saisi puissent être étudiées plus à fond et qu'un rapport soit élaboré qui sera soumis à une troisième session plénière de la conférence au sujet de la constitution, laquelle sera tenue immédiatement après la conférence fédérale-provinciale sur les questions financières et autres qui aura lieu à Ottawa le 4 décembre 1950.

Le comité permanent a aussi été autorisé à étudier les moyens et procédés à employer pour établir une constitution canadienne au Canada, à titre d'acte essentiellement canadien.

Je crois que tous nos collègues voudraient, monsieur le premier ministre de Québec, que je vous répète en français les remerciements qu'ils vous adressent à vous et à vos collègues ainsi qu'à tout le personnel de votre établissement, cet Hôtel du Gouvernement, pour la grande courtoisie qui nous a été témoignée; et que je vous assure que nous avons tous été très favorablement impressionnés par ces preuves tangibles du désir de chacun de faire tout ce qui pouvait dépendre

de lui pour trouver au problème qui nous intéresse une solution qui sauvegarde les droits essentiels de tous et qui permette néanmoins la réalisation de ces modifications que les circonstances de l'époque actuelle et des années à venir, et le progrès de la nation canadienne, peuvent en aucun temps rendre désirables ou avantageuses.

HON. MAURICE DUPLESSIS: Monsieur le président, la province de Québec, durant ces quelques jours, a écrit une page d'histoire particulièrement remarquable. Pour la première fois tous les premiers ministres au Canada, en commençant par un fils éminent de Québec, le très honorable monsieur St-Laurent, ont ici discuté amicalement et ont échangé leurs vues respectives dans le but d'obtenir pour le pays, que nous aimons, une constitution essentiellement canadienne, faite ici par des Canadiens et dont les termes respecteront les droits fondamentaux de chacun. Ce sont les principes de la confédération canadienne, basée non seulement sur une entente entre quatre provinces pionnières, mais sur un traité entre deux grandes races. Ce sont ces problèmes que nous étudions ensemble afin de trouver le meilleur moyen de coopérer davantage, si possible, à la grandeur de notre pays et à la prospérité des provinces qui le composent.

Je tiens à vous dire, monsieur le président, que vous avez présidé ces assises d'une façon remarquable et avec une courtoisie dont vous êtes coutumier, avec une affabilité et une compétence qui ont certainement facilité le travail et ont contribué au succès de cette conférence. Comme premier ministre de la province de Québec et comme compatriote je vous remercie et je vous dis que nous conserverons de votre stage à Québec comme président de ces mémorables assises un souvenir durable et une appréciation que le temps ne pourra jamais effacer.

Tous les premiers ministres ont exprimé leurs opinions. Le but d'une conférence n'est pas de se constituer en moule assimilateur, mais le but d'une conférence c'est d'écouter et d'échanger les opinions de chacune des parties qui y prennent part. Je crois que nous avons exprimé franchement notre manière de voir. Notre façon de procéder n'a fait que confirmer d'une manière éclatante le vieil axiome "du choc des idées jaillit la lumière". Du choc des idées exprimées au cours de ces assises, je dirais amicalement et fraternellement a jailli, monsieur le président, une lumière particulièrement étincelante et réconfortante et qui illumine d'une façon optimiste, les grandes voies de l'avenir. Je crois que tous et chacun peuvent se rendre le témoignage d'avoir travaillé à l'érection d'un nouveau, magnifique et solide édifice national. Tous et chacun désirent que les fondations de cet édifice national soient d'une solidité que le temps ne pourra jamais diminuer.

L'attitude de la province de Québec est bien connue. Nous voulons la coopération et le respect intégral des droits de chacun et nous voulons travailler à la prospérité du pays. Le pays sera prospère en autant que nous aurons un système constitutionnel qui réponde à ses aspirations légitimes et soit fondé aussi sur la justice et le respect intégral des prérogatives et des droits essentiels de tous et de chacun.

Mr. Chairman, I wish first to thank you most earnestly for the very able, courteous and charming manner in which you have presided over this historic, memorable and unprecedented conference. As a son of Quebec I am glad to be able to say that your courtesy, your affability and your high qualifications have contributed in large part to the success of this conference. We thank you and we congratulate you.

There is no denying the fact that this conference has been remarkable for the spirit of friendly co-operation which has been shown by everyone from every part of the country. I think the more often we meet one another the better we will understand one another, and when we understand one another better we will like one another even better.

I was pleased to note that my friend the Premier of Manitoba wishes to annex part of Quebec. I am not at all surprised. We will discuss that matter

[Mr. St. Laurent.]



together. But I may tell him from the bottom of my heart that he has already annexed our hearts and that we are anxious to work hand in hand with him in a just and appropriate manner for the well-being of his province and for the prosperity of Canada.

As for my friend from Newfoundland, he was kind enough to refer to me personally. I am pleased to note that Newfoundlanders have gone all over Canada. They saved Quebec, they saved Ontario, and they appear to have discovered Labrador in an unlimited way. Mr. Smallwood, you may rest assured that the province of Quebec will always be glad to have with your province and your people, not only friendly relations but brotherly relations.

After all, we are all members of the great Canadian family and we are proud of it. We know that with Newfoundland, well disposed and friendly in her attitude we can forge ahead confidently and successfully.

I was glad to hear certain Prime Ministers indicate their delight at discovering Quebec to be such a great province, such a prosperous province, such a hospitable province. I would draw to their attention the fact that the more prosperous the province is, the more pleasant will be the hospitality, the more fruitful will be their visits. You may rest assured that when you are in Quebec you are at home and that you can never come again too soon nor too often. Quebec, along with Charlottetown in the maritime provinces, is one of the places which saw the birth of Confederation.

My friends from the West enjoy saying, and with reason, that the sun sets in the west. We are able to say, and with reason, also, that the sun rises in the east where it has always and will always rise. I submit that with the wonderful rays of a sunrise and with the magnificent glow of a sunset, we can produce a light that will illuminate in a most effective way the roads to a future of undying progress, prosperity and brotherly co-operation.

The CHAIRMAN: May I now, as was announced in the communique, adjourn this plenary conference to a day immediately following the federal-provincial conference that will open in Ottawa on December 4, and renew the expression of the hope that the continuing committee of attorneys general will at that time have made such progress with the considerable task we have turned over to them that we can ourselves make further important strides toward the goal which all of us share.

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At 11.00 p.m. the conference concluded with the singing of O Canada and God Save The King.





## APPENDIX I

The following is the English translation of speeches delivered in French on the date indicated.

MONDAY, September 25, 1950.

HON. MAURICE DUPLESSIS (*Premier of Quebec*): Mr. Prime Minister of Canada, Premiers of the Provinces and Delegates, it is fitting I think, that my opening remarks and my first words of welcome be spoken in French and so they are. On the other hand the traditional courtesy of Quebec makes it appropriate that the English language be used to welcome the delegates attending this memorable conference.

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THE CHAIRMAN (*Prime Minister of Canada*): Gentlemen, the constitution of Canada allows us to use the French language in the chamber where we are holding this conference, and it was certainly appropriate that your first words of welcome should be in the language that has been spoken from the earliest days of what is now the capital of the province of Quebec.

On my own behalf, on behalf of the Canadian government and, I may add I am sure, on behalf of the governments of the nine provinces other than Quebec, I wish to express to you and to your government our most sincere appreciation for your courtesy and hospitality in inviting us to hold in Quebec this second session of the constitutional conference. Personally I am very proud that it should take place in the capital of my native province of Quebec, for which I have always retained the attachment due to what is perhaps not a small homeland but what is ordinarily known as one's small homeland.

Since we set the precedent of holding a dominion-provincial conference elsewhere than in the national capital, I feel it is most desirable that it should take place in Quebec City.

The Premier of Ontario (Mr. Frost) was pointing out to me that a conference such as this could perhaps have been held in Orillia. For Quebec, indeed, is but seven or eight years older than Orillia, his native town, which was founded in 1615. There were thus seven or eight years in favour of Quebec, and that is why we are here.

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HON. MAURICE DUPLESSIS (*Premier of Quebec*): There is no need to repeat what I said in Ottawa during the first sessions of this important conference in January, 1950, I merely wish to reiterate our sincere desire to co-operate, in a spirit of loyalty and friendliness, in drafting and putting into effect an essentially Canadian constitution suited to the situation.

We have outgrown the period of guardianship and come of age. In my opinion, it is now time for an essentially Canadian constitution, made in Canada, by Canadians and for Canadians. I think our efforts should bend in that direction.

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TUESDAY, September 26, 1950.

MR. DUPLESSIS: Mr. Chairman and premiers, the position of the Province of Quebec is very clear-cut. We wish to co-operate in a friendly way on the intangible and fundamental bases. This does not mean that we do not recognize

the desirability of amending the present constitution. Tradition is not opposed to progress. The traditions of the Province of Quebec are entrenched, but they are not at a standstill.

It is fitting, I think, that the situation be well understood. When Confederation was decided upon it was not simply a matter of agreement between four pioneer provinces. It was first and above all a pact between two great races, whose traditions and culture endow Canada with tremendous advantages such as are enjoyed by no other country of the world; advantages that do not impoverish, but rather enrich our country greatly. These fundamental traditions we prize; it is our duty to do so and our right to preserve them.

Obviously, it costs nothing to dispose of your neighbour's property. It is easy to conclude an agreement providing for the apportionment of the other fellow's property. But that is not in keeping with the very spirit of the Canadian constitution. The Canadian constitution recognizes certain principles that we consider unalterable; but like all human acts, it can be perfected.

The premiers of some provinces expressed the opinion that the constitution, particularly with regard to matters of property and civil rights, is too rigid. It was only after lengthy discussions that the representatives of the four pioneer provinces, men of different races and religious denominations, came to a considered and reasonable understanding on this provision of the constitution. It is impossible to respect as they should be the rights of the two major races without at the same time respecting the fundamental traditions of the two great racial groups whose co-operation is essential to the progress of our country and to the welfare of our people.

It is obvious that preservation and respect of fundamental traditions depend largely if not wholly upon means of action or financial possibilities.

There is unanimous agreement in favour of provincial autonomy. The autonomy as conceived by the Fathers of Confederation for the two great races that brought it into being, is not merely a matter of words, but autonomy in law and in fact. Some believe that certain fundamental sections should be amended, because, as they say, their province is not wealthy and they want some social legislation. These questions should not be considered solely as material problems, as money matters. Social legislation embodies basic factors which are closely related to traditions, habits and ways of life.

Social legislation is based on traditions which we consider essential.

As far as the Province of Quebec is concerned, we have always done our ample share. In the matter of old age pension legislation, in the field of specialized teaching and of pensions for the blind, we have co-operated loyally and generously. We are always willing to co-operate. Co-operation is not a one-way street. It does not consist in the one party being willing to co-operate and in the other simply wishing to receive. It is not fair to ask us to surrender guarantees that protect our ethnic life and survival; money can never replace them.

The health insurance system of the Province of Quebec embodies religious and national traditions to which we hold with determination. That system may not suit all the provinces, but it is perfectly satisfactory to us and we stand by it. In this province, we have the exclusive right to legislate regarding the liberal professions, the system of education which gives training in the various professions, trades and other callings. This is a right we consider essential and sacred and we cannot decently surrender it. It is possible to seek and to find a basis of understanding that will respect the essential rights of each and everyone and take every circumstance into account. We shall be happy to seek and to obtain this basis of understanding.

I feel, of course, that our first move should be to domicile the constitution here in Canada.



There are certain fundamentals that must, in our opinion, remain intangible if our essential traditions are to be preserved. Our traditions do not stand in the way of progress. On the contrary. The traditions of the Province of Quebec have largely contributed, and continue to do so, to the welfare of the country, as well as to its lasting progress and prosperity.

Instead of apportioning the other fellow's property, we are all willing, I am sure, to arrive by way of mutual understanding at some formula of give and take which, while involving no unbearable compromise, would be just, fair and appropriate. If everyone shows a reasonable measure of goodwill, we can hope to reach agreement on an entirely Canadian basis.

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THURSDAY, September 28, 1950.

THE CHAIRMAN: Gentlemen, in the report of this last meeting certain things will necessarily be repeated in French. The press release sums up the decisions taken during our secret sessions. The report would be neither complete nor true to the spirit of our constitution if it did not contain in French, which is also an official language under the Canadian constitution, the summary of our conclusions. I therefore deem it my duty to put it on the record. It is as follows:

"The Constitutional Conference of Federal and Provincial Governments has discussed at Ottawa and in Quebec City the constitutional position and the procedure by which amendment of the present constitution could be effected in Canada.

The Conference has had a full and frank discussion of the principles applicable to such a general amending procedure and has reached agreement on many of them. Its members are unanimously of the opinion that substantial progress has been made and are exceedingly gratified at the spirit of harmony and co-operation which has been shown by all delegates throughout the whole of the proceedings.

Important sections of the Constitution involving what are considered fundamental and basic rights of the provinces were studied at length and considerable progress towards agreement has been made. Various formulae for amendment were submitted which, while having in view the safeguarding of these basic rights, would assure adequate flexibility in the constitution.

The Conference has requested the Continuing Committee of Attorneys General to study the proposals which it received with a view to arriving at an amending procedure satisfactory to all governments concerned. The Continuing Committee met today in the late afternoon and agreed that the Provincial Attorneys General and the Minister of Justice would exchange views by correspondence leading up to a meeting to be held at Ottawa on November 13, 1950, in order that the matters referred to it might be further considered and a report prepared for submission to a third plenary session of the Constitutional Conference to be held immediately after the Federal-Provincial Conference on fiscal and other matters which is to meet in Ottawa on December 4, 1950.

The Continuing Committee has also been authorized to study the methods and techniques whereby a Canadian Constitution can be domiciled in Canada as a purely Canadian instrument."

All our colleagues wish, I am sure, Mr. Premier of Quebec, that I repeat in French the thanks they have tendered to you, to your colleagues and to all the staff of these parliamentary buildings, for the great courtesy you have shown; I assure you that we have all been most favourably impressed by these tangible

signs which tend to show the determination of everyone to do everything in his power to solve the problem with which we are all concerned, in a way that would safeguard the essential rights of everyone, while at the same time bringing about the amendments which, in the present or the years to come, may, at any time, appear desirable or advantageous for the progress of the Canadian nation.

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HON. MAURICE DUPLESSIS: Mr. Chairman, during these last few days, the Province of Quebec has written an outstandingly remarkable page of history. For the first time, every prime minister in Canada, including one of Quebec's most prominent sons, the Right Honourable Mr. St. Laurent, have suggested and discussed in a friendly atmosphere the ways and means of endowing this country we all love with an essentially Canadian constitution, a constitution made here by Canadians, the terms of which shall respect the fundamental rights of each and every one. Such are the principles of the Canadian Confederation, based not only on an agreement between four pioneer provinces, but on a treaty between two great racial groups. Such are the problems we have been studying together in an effort to find the best ways of co-operating even more, if possible, to enhance our country's greatness and to increase the prosperity of our different provinces.

I wish to say to you, Mr. Chairman, that you have presided at these sessions in a remarkable way; you have fulfilled your task with your customary courtesy, as well as with affability and competence, thereby easing the task and contributing to the success of this Conference.

As Prime Minister of the Province of Quebec and as a compatriot of yours, I thank you and say to you that we shall keep of your stay in Quebec City as chairman of these memorable meetings a lasting memory and an appreciation that time will never erase.

Every Prime Minister expressed his opinion. The purpose of a conference is not to cast views in a standard mould, but to listen to the opinions of all who take part and exchange ideas with them. I feel that we have frankly expressed our points of view. We have done so in a way that strikingly gives point to the old saying: "the clash of ideas begets enlightenment." Mr. Chairman, the clash of ideas expressed so amicably and in such a brotherly fashion in these meetings has kindled a light particularly bright and comforting, one that sheds rays of hope and I would even say of optimism on the broad paths of the future. I believe that one and all can feel that they have had a hand in building up a new solid and splendid national structure. It is the hope of everyone that this new national structure may rest on foundations so firm that time can never weaken them.

The attitude of the Province of Quebec is well known. We desire co-operation, fullest respect for the rights of everyone, and a hand in the furtherance of the country's prosperity. Canada will prosper in so far as it has a constitutional system consonant with its rightful hopes and aspirations, a system based on justice and the fullest respect for the prerogatives and essential rights of one and all.

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## APPENDIX II

## FEDERAL REPRESENTATIVES

Rt. Hon. L. S. St. Laurent, Prime Minister.  
Hon. Stuart Garson, Minister of Justice.  
Hon. Brooke Claxton, Minister of National Defence.  
Hon. Paul Martin, Minister of National Health and Welfare.  
Hon. F. G. Bradley, Secretary of State.  
Hon. Hugues Lapointe, Minister of Veterans Affairs.  
Mr. F. P. Varcoe, Deputy Minister of Justice.  
Mr. Charles Stein, Under Secretary of State.  
Mr. P. M. Ollivier, Joint Law Clerk, House of Commons.  
Mr. E. A. Driedger, Counsel, Department of Justice.

## PROVINCIAL REPRESENTATIVES

*Ontario*

Hon. Leslie M. Frost, Premier.  
Hon. Dana Porter, Attorney General.  
Col. L. R. McDonald, Deputy to the Premier and Secretary of the Cabinet.  
Mr. C. R. Magone, Deputy Attorney General.  
Mr. Chester S. Walters, Deputy Provincial Treasurer and Controller of Finances.  
Mr. H. A. Cotnam, Provincial Auditor.  
Mr. George Gathercole, Assistant Provincial Statistician.  
Dean W. P. M. Kennedy, Adviser.  
Mr. Maurice Tremblay, Director of Publicity, Department of Mines.

*Quebec*

Hon. Maurice Duplessis, Premier.  
Hon. Onésime Gagnon, Provincial Treasurer.  
Hon. J. S. Bourque, Minister of Lands and Forests.  
Hon. Antonio Barrette, Minister of Labour.  
Hon. Paul Sauvé, Minister of Social Welfare and Youth.  
Hon. Patrice Tardif, Minister without Portfolio.  
Hon. Antoine Rivard, Solicitor General.  
Mr. Leopold Desilets, Deputy Attorney General.  
Mr. Arthur Beauchesne, Adviser.  
Mr. Emile Tourigny, Chef de Cabinet of the Premier.  
Mr. Georges Shink, Comptroller of Provincial Revenue.

*Nova Scotia*

Hon. Angus L. Macdonald, Premier.  
Hon. M. A. Patterson, Attorney General.  
Hon. R. M. Fielding, Minister of Municipal Affairs.  
Hon. H. D. Hicks, Minister of Education.  
Mr. John A. Y. MacDonald, Deputy Attorney General.  
Mr. Innis MacLeod, Departmental Solicitor.

*New Brunswick*

Hon. J. B. McNair, Premier and Attorney General.  
Mr. E. B. MacLachy, Deputy Attorney General.  
Mr. J. E. Hughes, Senior Counsel.  
Mr. H. W. Hickman, Senior Solicitor.

*Manitoba*

Hon. Douglas L. Campbell, Premier.  
 Hon. C. Rhodes Smith, Attorney General.  
 Hon. S. Marcoux, Municipal Commissioner.  
 Hon. C. E. Greenlay, Provincial Secretary and Minister of Labour.  
 Mr. R. M. Fisher, Deputy Provincial Secretary.  
 Mr. R. E. Moffatt, Economic Adviser.

*British Columbia*

Hon. Byron I. Johnson, Premier.  
 Hon. G. S. Wismer, Attorney General.  
 Hon. W. T. Straith, Minister of Education.  
 Mr. H. Carl Goldenberg, Special Counsel.  
 Mr. J. W. Fisher, Deputy Minister of Finance.  
 Mr. H. Alan MacLean, Assistant Deputy Attorney General.  
 Mr. Percy C. Richards, Executive Assistant to the Premier.

*Prince Edward Island*

Hon. J. Walter Jones, Premier.  
 Hon. J. Wilfrid Arsenault, Provincial Secretary.  
 Hon. W. E. Darby, Attorney and Advocate-General.

*Saskatchewan*

Hon. T. C. Douglas, Premier.  
 Hon. J. W. Corman, Attorney General.  
 Prof. F. R. Scott, Adviser.  
 Dean F. C. Cronkite, Adviser.  
 Mr. J. W. W. Graham, Secretary to the Cabinet.

*Alberta*

Hon. E. C. Manning, Premier.  
 Hon. Lucien Maynard, Attorney General.  
 Mr. H. J. Wilson, Deputy Attorney General.  
 Mr. J. J. Frawley, Counsel.

*Newfoundland*

Hon. J. R. Smallwood, Premier.  
 Hon. H. W. Quinton, Minister of Finance.  
 Hon. Leslie R. Curtis, Attorney General.  
 Hon. W. J. Keough, Minister of Fisheries and Co-operatives.

## SECRETARIAT

Mr. R. G. Robertson, Privy Council Office.  
 Mr. Paul Pelletier, Privy Council Office.  
 Miss Muriel Ann Mosley, Secretary of State Department.

## APPENDIX III

### Report of the Committee of Attorneys General to the Constitutional Conference of the Federal and Provincial Governments

Your Committee reports as follows:—

(1) That at the conclusion of the plenary session of the Constitutional Conference of the Federal and Provincial Governments, January 12, 1950, the Committee of Attorneys General authorized a sub-committee consisting of the Honourable S. Garson, the Honourable M. Duplessis, K.C., and the Honourable Dana Porter, K.C., to appoint a secretariat. This sub-committee accordingly unanimously appointed as Joint Secretaries J. F. MacNeil and L. Paré.



(2) That after discussion by long distance telephone the Attorneys General unanimously concurred in recommending the following procedure to the members of the Continuing Committee:

- (a) that the briefs of all governments be forwarded to the Joint Secretaries as soon as such briefs were completed;
- (b) that as soon as the brief of each government was received in the Secretary's office, but not before, the Secretary would forward to such government a copy, in quadruplicate, of all briefs of other governments which had been previously filed with the Secretary and would also forward as soon as possible a copy in quadruplicate of the briefs of other governments thereafter filed as soon as they became available;
- (c) that the Federal Government should file its brief and be entitled to copies of the briefs of other governments on the same basis as each of the provincial governments.

(3) That briefs of all governments were filed with the Secretaries and distributed on or before July 24, 1950. Copies are available for use of the plenary conference.

(4) That compilation of the classification of sections submitted was prepared and the Committee met August 21, 1950, to carry out the instruction of the Conference.

(5) That from the briefs submitted it was found that there was a large measure of agreement as to the categories in which the following sections of the B.N.A. Act should be placed: 1, 4, 6, 7, 11, 13, 14, 15, 18, 19, 24, 30, 32, 33, 34, 35, 36, 38, 39, 44, 45, 46, 47, 48, 49, 53, 54, 93, 98, 103, 105, 106, 114, 115, 116 and 124. The final classification of these sections is set out in Appendix 1.

(6) After a frank and full discussion the sections—other than those listed in Appendix 1—were disposed of as set out in Appendices 2 and 3.

(7) That in accordance with instructions of the Conference the Committee fixed the date for the re-assembling of the Conference as September 25, 1950, at Quebec.

(8) That appended hereto is a list of those who took part in the Conference. (Appendix 4).

Respectfully submitted,

"S. GARSON"





## APPENDIX 1

### (Report of Attorneys-General)

Sections on which there was a large measure of agreement in the Briefs submitted prior to the meeting of the Committee.

[illegible]





## APPENDIX 2

### (Report of Attorneys-General)

Sections upon which agreement was reached at the Conference. Disposed of as follows:

| Section  | Canada  | Ont. | Que.   | N.S. | N.B. | Man. | B.C. | P.E.I. | Sask. | Alta. | Nfld. |
|----------|---|------|--------|------|------|------|------|--------|-------|-------|-------|
| 3        | 4   | 4    | 4      | 4    | 4    | 4    | 4    | 4      | 4     | 4     | 4     |
| 5        | 4   | 4    | 4      | 4    | 4    | 4    | 4    | 4      | 4     | 4     | 4     |
| 8        | 4   | 4    | 4      | 4    | 4    | 4    | 4    | 4      | 4     | 4     | 4     |
| 10       | 1   | 1    | 1      | 1    | 1    | 1    | 1    | 1      | 1     | 1     | 1     |
| 11       | 1   | 1    | 1      | 1    | 1    | 1    | 1    | 1      | 1     | 1     | 1     |
| 12       | 1   | 1    | 1      | 1    | 1    | 1    | 1    | 1      | 1     | 1     | 1     |
| 16       | 1   | 1    | 4      | 1    | 1    | 1    | 1    | 1      | 1     | 1     | 1     |
| 23 (1-5) | 1   | 1    | 1      | 1    | 1    | 1    | 1    | 1      | 1     | 1     | 1     |
| 23 (6)   | 3   | 3    | 3      | 3    | 3    | 3    | 3    | 3      | 3     | 3     | 3     |
| 37       | 6   | 6    | 6      | 6    | 6    | 6    | 6    | 6      | 6     | 6     | 6     |
| 40       | All agreed in 6 with right of Parliament of Canada preserved. |      |        |      |      |      |      |        |       |       |       |
| 41       | All agreed in 6 with right of Parliament of Canada preserved. |      |        |      |      |      |      |        |       |       |       |
| 63       | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 64       | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 65       | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 66       | 4   | 4    | 4      | 4    | 4    | 4    | 4    | 4      | 4     | 4     | 4     |
| 68       | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 70       | 6   | 6    | 6      | 6    | 6    | 6    | 6    | 6      | 6     | 6     | 6     |
| 72       | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 73       | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 74       | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 75       | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 76       | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 77       | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 78       | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 79       | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 80       | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 83       | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 84       | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 85       | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 86       | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 87       | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 91       | 4   | 4    | 4      | 4    | 4    | 4    | 4    | 4      | 4     | 4     | 4     |
| 94       | 3   | 3    | 3      | 3    | 3    | 3    | 3    | 3      | 3     | 3     | 3     |
| 95       | 4   | 4    | 4      | 4    | 4    | 4    | 4    | 4      | 4     | 4     | 4     |
| 96       | 4   | 4    | 4      | 4    | 4    | 4    | 4    | 4      | 4     | 4     | 4     |
| 102      | 1   | 1    | 1      | 1    | 1    | 1    | 1    | 1      | 1     | 1     | 1     |
| 104      | 6   | 6    | 6      | 6    | 6    | 6    | 6    | 6      | 6     | 6     | 6     |
| 107      | 3   | 3    | 3      | 3    | 3    | 3    | 3    | 3      | 3     | 3     | 3     |
| 110      | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 111      | 4   | 4    | 4      | 4    | 4    | 4    | 4    | 4      | 4     | 4     | 4     |
| 112      | 6   | 6    | 6      | 6    | 6    | 6    | 6    | 6      | 6     | 6     | 6     |
| 119      | 6   | 6    | 3 or 6 | 6    | 6    | 6    | 6    | 6      | 6     | 6     | 6     |
| 120      | 1   | 1    | 1      | 1    | 1    | 1    | 1    | 1      | 1     | 1     | 1     |
| 122      | 6   | 6    | 6      | 6    | 6    | 6    | 6    | 6      | 6     | 6     | 6     |
| 126      | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 128      | All agreed in 1 and 2   |      |        |      |      |      |      |        |       |       |       |
| 130      | 6   | 6    | 6      | 6    | 6    | 6    | 6    | 6      | 6     | 6     | 6     |
| 131      | 6   | 6    | 6      | 6    | 6    | 6    | 6    | 6      | 6     | 6     | 6     |
| 132      | 4   | 4    | 4      | 4    | 4    | 4    | 4    | 4      | 4     | 4     | 4     |
| 134      | 6   | 6    | 6      | 6    | 6    | 6    | 6    | 6      | 6     | 6     | 6     |
| 135      | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 136      | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 137      | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 138      | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 139      | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 140      | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 141      | 6   | 6    | 6      | 6    | 6    | 6    | 6    | 6      | 6     | 6     | 6     |
| 143      | 3   | 3    | 3      | 3    | 3    | 3    | 3    | 3      | 3     | 3     | 3     |
| 144      | 2   | 2    | 2      | 2    | 2    | 2    | 2    | 2      | 2     | 2     | 2     |
| 146      | 4   | 4    | 4      | 4    | 4    | 4    | 4    | 4      | 4     | 4     | 4     |



## APPENDIX 3

## (Report of Attorneys-General)

Sections upon which it was not possible to secure unanimous agreement and on which accordingly the Committee recommend there be further consideration at the Conference.

| Section | Canada  | Ont.    | Que.    | N.S.    | N.B.    | Man.    | B.C.    | P.E.I.  | Sask.   | Alta.   | Nfld.   |
|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| 99      | 4       | 4       | †       | 4       | 4       | 4       | 4       | 4       | 4       | 4       | 4       |
| 17      | 1       | 4       | 5 and 4 | 5 and 4 | 5       | 1       | 1       | 1       | 1       | 4       | 1       |
| 20      | 1 and 4 | 4       | 4       | 4       | 4       | 1       | 1 and 4 | 1       | 5       | 4       | 1       |
| 21      | 1       | 5 and 4 | 5 and 4 | 5 and 4 | 5 and 4 | 1       | 4       | 4 and 5 | 1       | 4       | 4       |
| 22      | 1       | 4       | 5 and 4 | 5 and 4 | 5 and 4 | 1       | 4       | 4 and 5 | 1       | 4       | 4       |
| 26      | 1       | 5 and 4 | 5 and 4 | 5 and 4 | 5 and 4 | 1       | 4       | 4 and 5 | 1       | 4       | 4       |
| 27      | 1       | 5 and 4 | 5 and 4 | 5 and 4 | 5 and 4 | 1       | 4       | 4 and 5 | 1       | 4       | 4       |
| 28      | 1       | 5 and 4 | 5 and 4 | 5 and 4 | 5 and 4 | 1       | 4       | 4 and 5 | 1       | 4       | 4       |
| 29      | 1       | 1       | 4       | 1       | 1       | 1       | 1       | 1       | 1       | 1       | 1       |
| 31      | 1       | 1       | 4       | 1       | 1       | 1       | 1       | 1       | 1       | 1       | 1       |
| **50    | **      | **      | **      | **      | **      | **      | **      | **      | **      | **      | **      |
| 51      | 1       | 4       | 5 and 4 | 5 and 4 | 5 and 4 | 1       | 5 and 4 | 4       | 5 and 4 | 5 and 4 | 4       |
| 51A     | 1       | 4       | 5 and 4 | 5       | 5       | 1       | 5 and 4 | 5       | 5       | 5       | 5       |
| 52      | 1       | 4       | †       | 4       | 4       | 4       | 4       | 4       | 4       | 4       | 4       |
| *55     | 1       | 1 or 6  | 1 or 6  | 1 or 6  | 1 or 6  | 1 or 6  | 1 or 6  | 1 or 6  | 1 or 6  | 1 or 6  | 1 or 6  |
| *56     | —       | 1 or 6  | 1 or 6  | 1 or 6  | 1 or 6  | 1 or 6  | 1 or 6  | 1 or 6  | 1 or 6  | 1 or 6  | 1 or 6  |
| *57     | —       | 1 or 6  | 1 or 6  | 1 or 6  | 1 or 6  | 1 or 6  | 1 or 6  | 1 or 6  | 1 or 6  | 1 or 6  | 1 or 6  |
| 58      | 4       | 4       | 2       | 4       | 4       | 4       | 4       | 4       | 4       | 2       | 4       |
| 59      | 4       | 4       | 2       | 4       | 4       | 4       | 4       | 4       | 4       | 2       | 4       |
| 60      | 4       | 4       | 2       | 4       | 4       | 4       | 4       | 4       | 4       | 2       | 4       |
| 61      | 4       | 4       | 2       | 4       | 4       | 4       | 4       | 4       | 4       | 2       | 4       |
| 62      | 4       | 4       | 2       | 4       | 4       | 4       | 4       | 4       | 4       | 2       | 4       |
| 67      | 4       | †       | †       | 1 or 4  | 1       | 4       | 1       | 2       | 4       | 2       | 4       |
| **69    | **      | **      | **      | **      | **      | **      | **      | **      | **      | **      | **      |
| **71    | **      | **      | **      | **      | **      | **      | **      | **      | **      | **      | **      |
| 82      | 3       | 3       | 2       | 3       | 3       | 2       | 3       | 3       | 3       | 3       | 3       |
| **88    | **      | **      | **      | **      | **      | **      | **      | **      | **      | **      | **      |
| *90     | 4       | 6       | 6       | 6 and 4 | 6 and 4 | 4       | 6 and 4 | 6 and 4 | 6 and 4 | 6 and 4 | 6 and 4 |
| 92      | (1)     | 4       | 5       | 5       | 5       | 4       | 4       | 4       | 4       | 4       | 5       |
|         | (2)     | 4       | 5       | 5       | 5       | 4       | 5       | 5       | 4       | 5       | 5       |
|         | (3)     | 4       | 5       | 5       | 5       | 4       | 5       | 5       | 4       | 5       | 5       |
|         | (4)     | †       | 5       | 5       | 4       | 4       | 5       | 4       | 4       | 4       | 4       |
|         | (5)     | —       | 5       | 5       | 4       | 4       | 5       | 4       | 4       | 4       | 5       |
|         | (6)     | —       | 4       | 5       | 4       | 4       | 4       | 4       | 4       | 4       | 4       |
|         | (7)     | —       | 4       | 5       | 4       | 4       | 4       | 4       | 4       | 4       | 4       |
|         | (8)     | —       | 5       | 5       | 4       | 4       | 4       | 4       | 4       | 4       | 4       |
|         | (9)     | —       | 5       | 5       | 4       | 4       | 4       | 4       | 4       | 4       | 4       |
|         | (10)    | —       | 4       | 5       | 4       | 4       | 4       | 4       | 4       | 4       | 4       |
|         | (11)    | —       | 4       | 5       | 4       | 4       | 4       | 4       | 4       | 4       | 4       |
|         | (12)    | 5       | 5       | 5       | 5       | 5       | 5       | 5       | 5       | 5       | 5       |
|         | (13)    | 4 and 5 | 5       | 5       | 4 and 5 | 4 and 5 | 5 and 4 | 4 and 5 | 4       | 4       | 4 and 5 |
|         | (14)    | —       | 5       | 5       | 5       | 5       | 5       | 5       | 5       | 5       | 5       |
|         | (15)    | —       | 5       | 5       | 4       | 4       | 4       | 4       | 4       | 4       | 4       |
|         | (16)    | —       | 4       | 5       | 4       | 4       | 5, 4    | 4       | 4       | 4       | 4       |
| 97      | 3       | 3       | †       | 3       | 3       | 3       | 3       | 3       | 3       | 3       | 3       |
| 99      | 3 and 5 | 3 and 5 | 3       | 3 and 5 | 3 and 5 | 4       | 3 and 5 | 2       | 3 and 4 | 4       | 3 and 5 |
| 100     | 4       | 4       | 4       | 4       | 4       | 4       | 4       | 4       | 4       | 4       | 4       |
| 101     | 1       | 4       | 4       | 4       | 4       | 4       | 4       | 4       | 4       | 4       | 4       |
| 108     | 1       | 1       | 3       | 1       | 1       | 1       | 1       | 1       | 4       | 1       | 1       |
| 109     | 4       | 4       | 2       | 4       | 4       | 4       | 4       | 4       | 4       | 4       | 4       |

Ontario and Quebec are to agree on the classification of this section and to notify the Secretary



| Section | Canada | Ont.    | Que.    | N.S.   | N.B.   | Man.    | B.C.    | P.E.I.  | Sask. | Alta. | Nfld. |
|---------|--------|---------|---------|--------|--------|---------|---------|---------|-------|-------|-------|
| 117     | 3      | 3       | 3       | 3      | 3      | 3       | 3       | 3       | 4     | 3     | 3     |
| 118     | 4      | 4       | 3       | 4      | 4      | 3       | 3       | 3       | 3     | 4     | 3     |
| 121     | 5      | 5       | 4       | 5      | 5      | 5       | 5       | 5       | 4     | 5     | 5     |
| 123     | 6      | 6       | †       | 6      | 6      | 6       | 6       | 6       | 6     | 6     | 6     |
| 125     | 4      | 4       | 4       | 4      | 4      | 1 and 2 | 4       | 4       | 4     | 4     | 4     |
| 129     | 4      | 4       | 2       | 4      | 4      | †       | 4 and 5 | 3       | 4     | 4     | 3     |
| 133     | 5      | 5       | 5 and 4 | 5      | 5      | 5       | 5       | 5       | 5     | 5     | 5     |
| 142     | 6      | 6       | 2       | 6      | 6      | 6       | 6       | 6       | 6     | 6     | 6     |
| 147     | 1      | 4 and 5 | 5 and 4 | 4 or 5 | 5 or 4 | 1       | 4       | 5 and 4 | 1     | 4     | 4     |

\* Classification under 6 by the Provinces is to indicate reservation of a Bill passed by the Federal Parliament for the signification of the Queen's pleasure and Disallowance of Federal Acts by the King in Council is to be deleted from the sections.

\*\* Sections to stand pending decision of the Conference on the advisability of drafting a uniform section on the constitution of the legislature, providing for a yearly session thereof and for the duration of the legislature.

† Abstains.

**APPENDIX 4 (Report of Attorneys-General)****Federal and Provincial Representatives and Advisers**

## FEDERAL REPRESENTATIVES

Honourable Stuart Garson (Chairman), Minister of Justice  
Mr. F. P. Varcoe, Deputy Minister of Justice  
Mr. Charles Stein, Under-Secretary of State  
Mr. P. M. Ollivier, Joint Law Clerk, House of Commons  
Mr. E. A. Driedger, Department of Justice  
Mr. R. G. Robertson, Privy Council Office.

## PROVINCIAL REPRESENTATIVES

*Ontario*

Honourable Dana Porter, Attorney-General  
Mr. C. R. Magone  
Col. L. R. McDonald

*Quebec*

Honourable Maurice Duplessis, Attorney-General  
Honourable A. Rivard, Solicitor-General  
Dr. A. Beaudesne  
Mr. R. Ouellet

*Nova Scotia*

Honourable M. A. Patterson, Attorney-General  
Mr. John A. Y. MacDonald

*New Brunswick*

Honourable J. B. McNair, Attorney-General  
Mr. E. B. MacLachy  
Mr. J. E. Hughes

*Manitoba*

Honourable C. Rhodes Smith, Attorney-General  
Mr. R. E. Moffat  
Mr. R. M. Fisher

*British Columbia*

Honourable Gordon Wismer, Attorney-General  
Mr. H. Alan MacLean

*Prince Edward Island*

Honourable W. E. Darby, Attorney-General

*Saskatchewan*

Prof. F. R. Scott  
Dean F. C. Cronkite  
Mr. J. W. W. Graham

*Alberta*

Honourable Lucien Maynard, Attorney-General  
 Mr. E. J. Wilson  
 Mr. J. J. Frawley

*Newfoundland*

Honourable L. R. Curtis, Attorney-General

## SECRETARIAT

Mr. J. F. MacNeill, Law Clerk and Parliamentary Counsel—Joint Secretary  
 Mr. Lorenzo Paré, Joint Secretary  
 Miss M. A. Mosley, Secretary of State Department

## EXPLANATORY NOTE

In this report reference by numbers to the six categories into which the sections of the British North America Act have been classified are as follows:

- Category 1: Provisions which concern Parliament only;
- Category 2: Provisions which concern the Provincial Legislatures only;
- Category 3: Provisions which concern Parliament and one or more but not all of the Provincial Legislatures;
- Category 4: Provisions which concern Parliament and all of the Provincial Legislatures;
- Category 5: Provisions which concern fundamental rights (as for instance, but without restriction, education, language, solemnization of marriage, administration of justice, provincial property in lands, mines, and other natural resources) and the amendment of the amending procedures.
- Category 6: Provisions which should be repealed.

STUART GARSON,  
*Chairman.*

OTTAWA, September 1, 1950.

## APPENDIX IV

**Briefs submitted by the federal and provincial governments to the committee of attorneys general prior to the meeting of August 21**

## GOVERNMENT OF CANADA

*Classification of Sections of the  
 British North America Act*

*I. Preliminary Remarks*

The present submission is presented in accordance with the terms of the resolution adopted by the Constitutional Conference on January 12, 1950. It represents an allocation of the sections of the B.N.A. Act as it now stands. In allocating these sections it should be pointed out that any amending procedure must necessarily confer legislative authority, and such authority can be conferred only in terms of subject matter and not in terms of section numbers. It would not, for example, be sufficient merely to authorize a legislative body to amend a particular section, because the authorization does not contain any indication of the nature of the amendment that may be made except the implied



indication that the amendment must relate to the subject matter of the section to be amended. An amending procedure founded entirely on references to particular sections would, it is suggested, give rise to serious problems because of the difficulty in defining accurately the subject matter of each individual section. The federal government, therefore, suggests that the allocation of sections should be regarded as a broad allocation of subject matters in the form of references to particular sections, rather than as a suggested form of amending procedure in terms of section numbers.

As indicated above, the federal government's allocation is based on the B.N.A. Act as it now stands, but discussion may disclose a basis for general agreement on a distribution that would be more satisfactory to all parties concerned. If so, the federal government would be ready to contribute in every way possible to achieving such a distribution and would be glad to consider any modification of existing provisions that would be of assistance.

It is in the light of the above considerations, and not with a view to presenting any final or definitive scheme for distribution of the sections of the British North America Act, that the present submission is made.

The group numbers in the text refer to the six heads of classification set forth in the report of the Committee of Attorneys General of the Constitutional Conference, which was made to the Conference and unanimously adopted on January 12, 1950.

## II. *General*

Some difficulties have been encountered in attempting to classify the various sections of the British North America Act. They are as follows:

1. Some sections fall partly within one group and partly within another. For example, section 128 deals with oaths to be taken by members of the House of Commons and also by members of the provincial legislatures. To the extent that the section deals with the House of Commons it is suggested that it should fall in Group (1) and to the extent that it deals with the provincial legislatures, it is suggested that it should fall in Group (2). Mixed sections of this class have been indicated as falling in part in one group and in part in another group.

2. Some sections are not suitable for formal amendment. There are sections that, by their own terms or by some other provision in the British North America Act, are subject to alteration either by Parliament or the legislatures. If the appropriate legislative body legislates on the subject matter the section becomes spent. For example, section 70 provides that the Legislative Assembly of Ontario shall be composed of eighty-two members. A formal amendment to this section was not necessary to change the membership of the Ontario Legislature. By virtue of provincial legislation enacted pursuant to head 1 of section 92, the membership has been changed and section 70 has become spent.

3. The selection of spent provisions has also presented some difficulty. The terms of provincial legislation will determine whether or not a section relating to a provincial constitution has become spent. For example, section 84 provides for the continuance of existing election laws in Ontario and Quebec and if present provincial laws have covered the field, then the section may be spent. Accordingly sections that may be nullified by provincial legislation have been left in the classification pending an indication from the province concerned that they may be regarded as spent.

4. Sections on disposition of property at Confederation may be spent or may not require amendment. They were, for the most part, inserted for the purpose

of settling property questions at the time of Confederation. For example, section 108 transfers certain property to Canada but there is nothing to prevent Canada from transferring some of this property back to the provinces, nor is there anything to prevent a province transferring additional property to Canada.

5. Sections 91, 92, 95 and 132 have not been specifically allocated to any one or other of the six groups established at the Constitutional Conference. The resolution itself contained the suggestion that subsections (12) and (14) of section 92 might properly be regarded as coming within Group (5). Apart from these subsections, section 92 and the other three sections dealing with the distribution of legislative power were left without any clear agreement as to what disposition would be the most satisfactory. These provisions are of particular importance for the continued successful operation of Canadian government, both federal and provincial, and the federal government feels that an attempt on its part at specific allocation to one or other of the six groups, without the benefit of further discussion of the problems involved, might not be the most helpful manner of proceeding at this time.

For these reasons it would seem desirable, before attempting any specific allocation of the sections on legislative jurisdiction, to have further discussion of the problems connected with their amendment. The federal government recommends that these matters be made the subject of special consideration at the next meeting of the Continuing Committee.

6. The British North America Acts enacted after the original Act of 1867 and other constitutional documents have not been included in this analysis. The provisions of other constitutional Acts and documents correspond to sections in the British North America Act and could be placed accordingly.

### III. Classification

#### *Group 1—Provisions which concern Parliament only*

- 9-16. Executive Power
  - 17. Constitution of Parliament of Canada
  - 18. Privileges of Parliament
  - 20. Yearly Session of Parliament (in time of war)
- 21-36. *Senate*

The majority of these sections deal with matters of detail relating to the qualification of Senators, appointment, procedure, quorum, etc., and seem clearly to belong to Group 1. The entire series of sections concerning the Senate has accordingly been placed in that Group. It may be that, if agreement can be reached on a general amending procedure, it would be deemed desirable to place sections 17, 21 and 22 in another Group, possibly in Group 4.

- 38-39.
- 44-49. and
- 51-52. House of Commons
  - 50. Duration of House of Commons (in time of war)
- 53-57. Money Votes, Royal Assent
  - 101. Supreme and other Federal Courts
  - 102. Consolidated Revenue Fund
  - 103. Consolidated Revenue Fund
  - 104. Provincial debts
  - 105. Salary of Governor General
  - 106. Consolidated Revenue Fund
  - 120. Form of Payment to provinces
  - 128. (in part) Oath of Allegiance

- 129. (in part) Continuance of Laws
- 137. (in part) Construction of temporary Acts
- 138. (in part) Errors in deeds and writs
- 147. Representation of new provinces

*Group 2—Provisions which concern provincial legislatures only*

- 63. Executive Officers of Ontario and Quebec
- 64. Executive governments of N.S. and N.B.
- 65. (except as regards the office of the Lieutenant-Governor)  
Powers to be exercised by Lieutenant-Governor of Ontario or Quebec with advice or alone.
- 68. Seats of provincial governments
- 69. (except as regards office of Lieutenant-Governor)  
Legislature for Ontario
- 70. Electoral districts (Probably Spent)
- 71. (except as regards office of Lieutenant-Governor)  
Legislature for Quebec
- 72-80. Legislative Council of Quebec (Probably Spent)
- 83-87. Provincial Legislatures (Probably Spent)
- 88. (except as regards office of Lieutenant-Governor)  
Constitution of Legislatures of N.S. and N.B.
- 126. (in part) Provincial Consolidated Revenue Funds
- 128. (in part) Oaths of Allegiance
- 129. (in part) Continuance of Laws
- 134. Appointment of Executive Officers (Probably Spent)
- 135. Powers of Executive Officers (Probably Spent)
- 136. Provincial Seals (Probably Spent)
- 137. (in part) Construction of temporary Acts
- 138. (in part) Errors in deeds and writs
- 139. Issue of proclamations before Union
- 140. Issue of proclamations after Union

*Group 3—Provisions which concern Parliament and one or more but not all of the provincial legislatures*

- 6. Boundaries of Ontario and Quebec
- 7. Boundaries of N.S. and N.B.
- 94. Uniformity of Laws
- 97-98. Selection of Judges
- 99. (to provide for retirement age) Tenure of Office of Judges  
These sections (97, 98 and 99, in part) are included in Group 3 so that a change in the law respecting selection of judges and tenure of office in one province may be made with the consent of that province.
- 107. Transfer of stocks, etc., to Federal Government
- 108. Transfer of property to Federal Government
- 110. Assets connected with provincial debts
- 111. Canada to be liable for provincial debts
- 112. Debts of Ontario and Quebec
- 113. Assets of Ontario and Quebec
- 114. Debt of Nova Scotia
- 115. Debt of New Brunswick
- 116. Payment of Interest to N.S. and N.B.
- 117. Provincial public property
- 119. Further grant to New Brunswick
- 124. New Brunswick lumber dues



- 142. Arbitration respecting debts (Probably Spent)
- 143. Division of records between Ontario and Quebec (Probably Spent)

*Group 4—Provisions which concern Parliament and all of the provincial legislatures*

- 1. Short Title
- 3. Declaration of Union
- 4. Use of name "Canada"
- 5. Division of Canada into provinces
- 8. Decennial Census
- 20. *Yearly Session of Parliament of Canada*
- 50. *Duration of House of Commons*  
Should there be any similar provisions with respect to annual sessions and duration of provincial legislatures?
- 58. Appointment of Lieutenant-Governors of provinces
- 59. Tenure of office of Lieutenant-Governor
- 60. Salaries of Lieutenant-Governors
- 62. Application of provisions of referring to Lieutenant-Governor
- 65. (insofar as it relates to Office of Lieutenant-Governor)  
Powers to be exercised by Lieutenant-Governor of Ontario or Quebec with advice or alone.
- 66. Application of provisions referring to Lieutenant-Governor in Council
- 67. Administration in absence, etc., of Governor
- 69. (insofar as it relates to Office of Lieutenant-Governor)  
Legislature for Ontario
- 71. (insofar as it relates to Office of Lieutenant-Governor)  
Legislature for Quebec
- 82. Summoning of Legislative Assemblies
- 88. (insofar as it relates to Office of Lieutenant-Governor)  
Constitution of Legislatures of N.S. and N.B.
- 90. Application to Legislatures of provisions respecting money votes, etc.
- 118. (as altered by B.N.A. Act, 1907) Grants to provinces
- 121. Free trade between provinces
- 125. Exemption from taxation
- 126. (in Part) Provincial Consolidated Revenue Fund

*Group 5—Provisions concerning fundamental rights (as for instance but without restriction, education, language, solemnization of marriage, administration of justice, provincial property in lands, mines and other natural resources) and the amending procedure*

- 93. Education  
As the title of the Group indicates, this section was considered at the Constitutional Conference as one that might appropriately be placed in Group 5.
- 96. Appointment of Judges
- 99. (in part) Tenure of Office of Judges
- 100. Salaries of Judges
- 109. Property in lands, mines, etc.
- 133. Languages

*Group 6—Provisions which should be repealed*

The resolution of January 12 established the Continuing Committee for the purpose of examining the classification of sections of the Canadian constitution with a view to arriving at an amending procedure. The resolution

does not contemplate that the Committee will examine substantive changes that might be considered desirable in the continuing provisions of the constitution as they now stand. Proposals for repeal of sections may be regarded as purely technical and not in the nature of suggestions for actual modification of the constitution when they relate to provisions that are clearly spent. In cases, however where sections have or could have a continuing effect, their repeal would constitute substantive amendments, and proposals relating to their repeal would be, in reality, proposals relating to substance rather than procedure. The federal government is, therefore, of the view that the Continuing Committee should consider sections for classification under Group 6 only when they are clearly spent. No sections should be classed as for repeal if such repeal would constitute a substantive change in the constitution.

In the light of the above consideration, the federal government would put the following sections under Group 6:

- 19. First Session of Parliament
- 37. Constitution of House of Commons in Canada
- 40. Electoral Districts for the provinces
- 41. Continuation of Election laws until Parliament otherwise provides
- 122. Continuation of Customs Laws
- 123. Exports and Imports between provinces
- 130. Transfer of Officers to Canada
- 131. Appointment of new officers
- 141. Penitentiary established until Parliament otherwise provides
- 146. Admission of other colonies

There are other sections that may be spent, depending upon whether provincial legislation has covered the field and the Federal Government would be prepared to consider including them in this Group if the provinces concerned so desire. These sections are 70, 72-80, 83-87, 134-136 and 142-144.

#### IV. *Delegation*

The report of the Committee of Attorneys General which was adopted by the Constitutional Conference on January 12 stated that "In the opinion of this committee the subject of delegation of powers should be placed upon the agenda". The resolution establishing the Standing Committee does not direct that it is to look into the question of delegation. Nevertheless, a provision to authorize the delegation of powers by a provincial to a federal authority or by a federal to a provincial authority might be of considerable influence on the decision as to the precise lines along which the general amending procedure should be drawn. Delegation would introduce an element of flexibility into the constitutional framework which might be considered to make possible a greater rigidity in some portions of the amending procedure, or in the application of the amending procedure to certain areas of the constitution. The federal government would, accordingly, be agreeable to having the Continuing Committee consider the question of delegation in order to assist the later discussions at the Conference when it resumes. In this connection, attention is drawn to the possibility that the Nova Scotia case on delegation will come before the Supreme Court of Canada in April.

OTTAWA, Canada.  
March 10, 1950.

## PROVINCE OF ONTARIO

*Draft proposal to be submitted for discussion to the Committee of  
Attorneys General of the Conference on  
Constitutional amendment.*

1. 'Constitution of Canada' means the British North America Acts 1867 to 1950 and any other Acts of the Parliament of the United Kingdom or Orders of His Majesty in Council affecting the constitution of Canada or of any Province or territory thereof.

2. The Parliament of Canada may from time to time amend, alter or repeal any of the provisions of the Constitution of Canada in relation to the Executive Government of Canada and the procedure, constitution and privileges of the House of Commons and the Senate except with respect to the representation of the Provinces in the House of Commons and the Senate and the requirements that there shall be a Session of the Parliament of Canada at least once each year and that no House of Commons shall continue for more than five years from the day of the return of the Writs for choosing the House; provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one-third of the Members of such House.

3. The Parliament of Canada may from time to time amend, alter or repeal any of the provisions of the Constitution of Canada which relate to one or more but not all of the Provinces with the consent of the Legislature of the Province to which such amendment, alteration or repeal relates; provided that nothing herein shall authorize any amendment, alteration or repeal of section 80 of the British North America Act 1867 unless the Act of the Legislature of the Province of Quebec consenting to such amendment, alteration or repeal has been passed as provided in the said section.

4. The Parliament of Canada may from time to time amend, alter or repeal any of the provisions of the Constitution of Canada with the consent of the Legislatures of all the Provinces and not otherwise, notwithstanding anything in this Act, with respect to,—

- (a) the use of the English or the French language;
- (b) the rights or privileges granted or secured to any class of persons with respect to schools;
- (c) the procedure for future amendments to the Constitution of Canada;
- (d) the legislative jurisdiction of the Provincial Legislatures except in relation to matters coming within the following classes of subjects;
  - (i) the establishment, maintenance and management of public and reformatory prisons in and for the Province;
  - (ii) the establishment, maintenance and management of hospitals, asylums, charities and eleemosynary institutions in and for the Province;
  - (iii) local works and undertakings;
  - (iv) the incorporation of companies with Provincial objects;
  - (v) Generally, all matters of a merely local or private nature in the Province.

5. The Parliament of Canada may from time to time amend, alter or repeal any of the provisions of the Constitution of Canada with the consent of not



fewer than two-thirds of the Legislatures of the Provinces provided that such two-thirds of the Legislatures represent not less than fifty-five per centum of the population of Canada according to the last decennial census of Canada in respect of all matters not hereinbefore provided for.

6. The British North America (No. 2) Act, 1949, is repealed.

March 1, 1950.

## PROVINCE OF ONTARIO

### (Supplementary Submission)

Classification of Sections of the British North America Acts in accordance with the report of the Committee of Attorneys General to the Constitutional Conference of Federal and Provincial Governments.

#### HEAD 1: *Provisions which Concern Parliament Only*

##### *British North America Act, 1867*

Section 10. Provisions referring to the Governor-General.

Section 11. Constitution of the Privy Council for Canada.

Section 12. Powers vested in the Lieutenant-Governors to be exercised by the Governor-General in Council in relation to the Government of Canada subject to being abolished or altered by the Parliament of Canada.

Section 13. Governor-General in Council to be construed as the Governor-General acting with the advice of the Privy Council.

Section 14. Authority to appoint Deputies to the Governor-General.

Section 15. Armed Forces to be vested in the Queen.

Section 18. Privileges of the House of Commons and Senate.

Section 23. Qualification of Senators.

Section 24. Summons of Senators.

Section 29. Tenure of Senators.

Section 30. Resignation of Senators.

Section 31. Disqualification of Senators.

Section 32. Filling vacancy in the Senate.

Section 33. Senate to determine questions of qualification.

Section 34. Appointment of Speaker of the Senate.

Section 35. Quorum of the Senate.

Section 36. Voting in the Senate.

Section 38. Calling together the House of Commons.

Section 39. Senators disqualified as Members of the House of Commons.

Section 40. Until Parliament otherwise provides—Electoral Districts in the four Provinces.

Section 41. Until Parliament otherwise provides—continuation in force of election laws.

Section 44. Election of the Speaker for House of Commons.

Section 45. Filling vacancy in the office of Speaker.

Section 46. The Speaker to preside at Meetings of the House of Commons.

Section 47. Until Parliament otherwise provides—filling vacancy in the Office of Speaker, House of Commons.

Section 48. Quorum—House of Commons.

Section 49. Voting in the House of Commons.

- Section 53. Appropriation and tax bills to originate in House of Commons.  
 Section 54. Appropriation and tax bills to be recommended in message of the Governor-General.  
 Section 55. Royal Assent to Bills.  
 Section 56. Disallowance by the Imperial Privy Council.  
 Section 57. Bills reserved for the Queen's pleasure.  
 Section 102. Creation of Consolidated Revenue Fund of Canada.  
 Section 103. Until Parliament otherwise provides, first charges on the Consolidated Revenue Fund of Canada.  
 Section 105. Until Parliament otherwise provides—Section fixing the salary of the Governor-General.  
 Section 106. Consolidated Revenue Fund to be appropriated by Parliament.  
 Section 120. Until Parliament otherwise provides, Section providing for payment of liabilities assumed by Canada at the Union.  
 Section 122. Until Parliament otherwise provides, Customs and Excise Laws to continue in force.  
 Section 128. Insofar as it relates to oath of Senators and Members of House of Commons.  
 Section 131. Until Parliament otherwise provides Governor-General in Council may appoint officers, etc.

*British North America Act, 1871, Cap. 78*

- Section 2. Power of Parliament of Canada to establish new Provinces in territories forming part of Canada but not included in any Province.  
 Section 4. Power of the Parliament of Canada to make provision for peace, order and good Government of territories not included in any Province.

HEAD 2: *Provisions which Concern the Provincial Legislature only*  
*British North America Act, 1867*

- Section 65. Continuation of the powers of the Lieutenant-Governors of Ontario and Quebec after the Union subject to alteration by the Legislatures.  
 Section 68. Seats of Provincial Governments until altered by the Government of the Province.  
 Section 69. Establishment of Legislature of Ontario.  
 Section 71. Establishment of the Legislature of Quebec.  
 Section 72. Constitution of the Legislative Council Quebec.  
 Section 73. Qualification of Legislative Councillors Quebec.  
 Section 74. Disqualification of Legislative Councillors Quebec.  
 Section 75. Filling vacancies in Legislative Council Quebec.  
 Section 76. Legislative Council to determine questions of qualifications Quebec.  
 Section 77. Appointment of Speaker Legislative Council Quebec.  
 Section 78. Until the Legislature otherwise provides, quorum of Legislative Council Quebec.  
 Section 79. Voting in the Legislative Council Quebec.  
 Section 80. Constitution of the Legislative Assembly Quebec.  
 Section 88. Constitution of the Legislature Nova Scotia and New Brunswick.  
 Section 128. Insofar as it relates to oath of Members of the Legislative Assembly and Legislative Council.

HEAD 3: *Provisions which Concern Parliament and One but not all of the Provincial Legislatures*

*British North America Act, 1867*

- Section 6. Upper Canada to constitute Ontario and Lower Canada to constitute Quebec.
- Section 7. Nova Scotia and New Brunswick to have same limits as at the passing of this Act.
- Section 82. Lieutenant-Governor of Ontario and Quebec to call together the Legislative Assemblies.
- Section 86. Yearly Session of the Legislature of Ontario and Quebec.
- Section 98. Judges of Quebec to be selected from that Bar.
- Section 104. The annual interest of the four Provinces to be a second charge on Consolidated Revenue Fund.
- Section 114. Nova Scotia's liability to Canada.
- Section 115. New Brunswick's liability to Canada.
- Section 116. Payment of interest to Nova Scotia and New Brunswick.
- Section 119. Further grant to New Brunswick.
- Section 124. Lumber dues in New Brunswick.

*British North America Act, 1871, Cap. 28*

- Section 3. Alteration of the limits of the Provinces.
- Section 5. Confirmation of Acts of the Parliament of Canada re Rupert's Land, North West Territories and the Province of Manitoba.
- Section 6. Limitation of Power of the Parliament of Canada to legislate for Manitoba or any future Act establishing a new Province.

*Ontario-Manitoba Boundary Act, 1889, Cap. 28. An Act Fixing the Boundaries of Ontario and Manitoba*

HEAD 4: *Provisions which Concern Parliament and all the Provincial Legislatures*

*British North America Act, 1867*

- Section 1. Short Title.
- Section 3. Proclamation of the Union.
- Section 4. Meaning of the word "Canada" in this Act.
- Section 8. Decennial census.
- Section 9. Executive Government to be vested in the Queen.
- Section 16. Seat of Government at Ottawa.
- Section 17. Constitution of the Parliament of Canada.
- Section 20. To be a yearly Session of Parliament.
- Section 21. Number of Senators.
- Section 22. Representation of Provinces in the Senate.
- Section 26. Adding to the number of Senators (See B.N.A. Act 1915).
- Section 27. Reduction of the Senate. (See B.N.A. Act 1915).
- Section 28. Maximum number of Senators. (See B.N.A. Act 1915).
- Section 37. Constitution of the House of Commons.
- Section 50. House of Commons to continue for five years.
- Section 51. Decennial readjustment of representation in Commons.
- Section 51A. Representation of Provinces in House of Commons.
- Section 52. Parliament of Canada may increase number of Members of House of Commons provided proportionate representation not disturbed.
- Section 58. Governor-General to appoint Lieutenant-Governor.



- Section 59. Tenure of Office of Lieutenant-Governor.  
 Section 60. Salary of Lieutenant-Governor.  
 Section 61. Oath of Lieutenant-Governor.  
 Section 62. Provisions referring to Lieutenant-Governor to extend to Administrator.  
 Section 66. Application of provisions referring to Lieutenant-Governor.  
 Section 90. Re-Appropriation and Tax Bills in the Legislatures and disallowance of Acts.  
 Section 91. Legislative power of the Parliament of Canada.  
 Section 92. (6) Establishment, maintenance and management of public and reformatory prisons in and for the Province.  
               (7) Establishment, maintenance and management of hospitals, asylums and eleemosynary institutions in and for the Province other than Marine Hospitals.  
               (10) Local works and undertakings.  
               (11) Incorporation of Companies with Provincial objects.  
               (16) Generally all matters of a merely local or private nature in the Province.  
 Section 94. Uniformity of Laws respecting property and civil rights.  
 Section 95. Concurrent power of Legislature respecting Agriculture and Immigration.  
 Section 96. Appointment of Superior and County Court Judges.  
 Section 97. Selection of Judges.  
 Section 99. Tenure of Office of Judges.  
 Section 100. Payment of salaries of Judges.  
 Section 101. Power of Parliament to constitute Supreme Court of Canada and additional Courts.  
 Section 109. Lands mines and minerals to belong to Provinces.  
 Section 111. Canada liable for the debts of each Province at the Union.  
 Section 117. Provinces to retain their respective public property with exceptions.  
 Section 118. Subsidies to the Provinces (superseded by 1907 Act).  
 Section 121. Products of one Province to enter other Provinces free.  
 Section 125. Lands and property of Canada and the Provinces not liable to taxation.  
 Section 126. Revenues of the Provinces to form Provincial Consolidated Revenue Funds.  
 Section 128. Insofar as the oath to be taken by Members of Provincial Legislatures are concerned.  
 Section 129. Continuance of laws, Courts, etc. existing at the Union.  
 Section 132. Treaty obligations.  
 Section 147. Representation of Newfoundland and P.E.I.

*British North America Act, 1886, Cap. 35*

- Section 1. Representation in the Senate and House of Commons from the territories.  
 Section 2. Validation of Acts formerly passed with respect of representation of the territories and increasing the number of Senators.

*British North America Act, 1907, Cap. 11*

Subsidies to the Provinces.

*British North America Act, 1915, Chap. 45*

Alteration of the Constitution of the Senate and House of Commons.

*Statute of Westminster, 1931*

Powers of Canada and the Provinces in relation to Imperial Legislation, etc.

**HEAD 5:** *Provisions concerning fundamental rights (as for instance, without restriction, education, language, solemnization of marriage, administration of justice, provincial property in lands, mines and other natural resources) and the amendment of the amending procedures.*

*British North America Act, 1867*

Section 92. 1. The amendment from time to time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the office of Lieutenant-Governor.

2. Direct taxation within the Province in order to the raising of a revenue for Provincial purposes.

3. The borrowing of money on the sole credit of the Province.

4. The establishment and tenure of Provincial offices and the appointment and payment of Provincial officers.

5. The management and sale of the public lands belonging to the Province and of the timber and wood thereon.

8. Municipal Institutions in the Province.

9. Shop, saloon, tavern, auctioneer and other licenses in order to the raising of a revenue for Provincial, local or municipal purposes.

12. The solemnization of marriage in the Province.

13. Property and civil rights in the Province.

14. The administration of justice in the Province, including the constitution, maintenance and organization of Provincial Courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those Courts.

15. The imposition of punishment of fine, penalty or imprisonment for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this Section.

Section 93. Power to make laws respecting education but protecting the rights and privileges in relation to schools of certain minorities.

Section 133. Regarding the use of the English or the French language.

**HEAD 6:** *Provisions which should be repealed (as far as Ontario is concerned)*

*British North America Act, 1867*

Section 5. Dividing Canada into four Provinces.

Section 19. Calling Parliament together not later than six months after Union.

Section 40. Electoral Districts of the four Provinces and the first Schedule.

Section 63. Composition of the Executive Councils of Ontario and Quebec.

Section 64. Constitution of the Executive authority in Nova Scotia and New Brunswick at the Union to continue.

Section 70. Electoral Districts in Ontario.

Section 83. Disqualification as Members of the Legislatures of Ontario and Quebec of persons holding office of profit.

Section 84. Continuance in existence of election laws in Ontario and Quebec.

Section 85. Duration of Legislative Assemblies, Ontario and Quebec.

Section 87. Proceedings in the Legislative Assemblies, Ontario and Quebec.

Section 107. Transfer of stocks, etc., belonging to the Provinces at the Union to Canada.

- Section 108. What Public Works to be the property of Canada (and the third Schedule).
- Section 110. Property of the Province at the Union.
- Section 112. Debt of Ontario and Quebec at the Union.
- Section 113. Joint property of Ontario and Quebec at the Union (and the fourth Schedule).
- Section 122. Until altered by the Parliament of Canada, customs and excise laws to continue.
- Section 123. Importation of goods between two Provinces.
- Section 130. Officers of the several Provinces at the Union to continue.
- Section 134. Until Legislatures of Ontario and Quebec otherwise provide, Ministers of the Crown to exercise their respective powers at the Union.
- Section 136. Great Seals of Ontario and Quebec.
- Section 137. Construction of temporary Acts.
- Section 138. Use of the words Upper Canada and Lower Canada in deeds, etc.
- Section 139. Proclamations issued before the Union to take effect after.
- Section 140. Issue of proclamations after the Union.
- Section 142. Arbitration with respect to adjustment of debts.
- Section 143. Division of records.
- Section 144. Constitution of Townships in Quebec.
- Section 146. Power to admit Newfoundland, Prince Edward Island, British Columbia, etc. to the Union.

*British North America Act, 1943, Cap. 30*

Postponement of redistribution of Seats in the Commons.

*British North America (2) Act, 1949* respecting the power of Parliament to amend its Constitution.

PROVINCE OF QUEBEC

*Preliminary Memorandum by the Government of the Province of Quebec re the Canadian Intergovernmental Conference Which Opened in Ottawa on January 10, 1950*

The matters submitted for the consideration of the delegates at this very important Conference include numerous problems which require very careful study.

The Province of Quebec is deeply convinced that we should have an essentially Canadian Constitution, made in Canada, by Canadians, for the Canadian people.

Our Province considers that the Canadian Constitution should be completely freed from all remaining traces of colonialism, both in the field of international relations and in the domain of Canadian intergovernmental relations.

In our opinion, the only appropriate and just system of government is one recognizing to the Provincial State and to the Federal State, each in its own respective sphere, all the powers which are indispensable for the carrying on of a responsible and democratic government, and this, both from the legislative and administrative standpoint, and also from the financial or fiscal point of view.

We feel certain that the complete acknowledgment of the bi-racial character of our country and of the essential rights of each one of the parties constituting the Canadian Federation, constitute the indispensable basis of real Canadian unity.

We are deeply convinced that constitutional stability and the clear and precise delimitation of provincial and federal rights are absolutely necessary to ensure genuine progress and well understood national unity in Canada.



In order to avoid the uncertainties and the hazards involved by legislation, which is at all times subject to amendments, we believe that the Canadian Constitution should be embodied in a treaty or convention.

Furthermore, logically and in all fairness, the Canadian Constitution should be drawn up in the two official languages: the English language and the French language.

We sincerely believe that these fundamental principles should guide us in our work.

We reaffirm our sincere desire to co-operate, in a friendly spirit, in preparing and drawing up an essentially Canadian Constitution, respectful of the rights of all parties concerned.

At this stage of the Conference we think that we should limit ourselves to general considerations. In the light of the discussion and of the exchanges of views which will take place between us, it will be advisable to determine, more precisely and in fuller detail, the most just and appropriate methods of achieving the fundamental aims outlined above.

### *I—Powers of the Federal Authorities*

These powers relate to matters concerning:

- The Governor General;
- The Executive Council;
- The prerogatives, immunities, indemnities of the Senators and the deliberations of the Senate;
- The prerogatives, immunities, indemnities of the members of the House of Commons, and the deliberations of the said House;
- The appointment of the Speakers of the Senate and of the House of Commons;
- International relations;
- International trade;
- Taxation and borrowing powers, in federal matters, clearly defined and adapted to the federative system;
- The postal service;
- The federal civil service;
- Currency and coinage;
- Incorporation of banks and the issue of paper money;
- Navigation and public harbours;
- Patents of invention;
- Lands reserved for the Indians;
- Bankruptcy, without encroaching upon the sphere of the Civil Code of the Province of Quebec;
- Canadian Citizenship;
- Naturalization;
- The Criminal law and the procedure in criminal matters except the constitution of Courts of criminal jurisdiction;
- The Exchequer Court;
- The Admiralty Court.

### *II—Powers of the Provincial Authorities*

These powers relate to matters concerning:

- The Lieutenant Governor;
- The Provincial Executive Council;
- The Legislature;
- Education;
- Property rights and civil law;
- Taxation and borrowing powers in provincial matters, clearly defined;
- The provincial civil service;

Provincial natural resources: mines, forests, water powers, etc;  
 Insurance;  
 The administration of justice, civil and criminal;  
 Hospitals;  
 Trades and professions;  
 Marriage;  
 Agriculture;  
 Colonization;  
 Fisheries;  
 Municipal and school institutions;

The organization and maintenance of Courts of civil and criminal jurisdiction in each Province and also procedure in civil matters and the appointment of judges of these Courts.

We are of the opinion that matters of civil law, of municipal law and of school law should be adjudicated upon, in the last resort, by a Court of Appeal set up by each Province, the Judges of which should be appointed by each Province.

### III—*Special Observations*

Since, in our opinion, it is advisable to proclaim the sovereignty, in their respective spheres, of the Federal Parliament and of the Provincial Legislatures, we believe that the powers of disallowance and of "reserve" referred to in the present Constitution, should be abolished.

The immediate repeal of the recent amendments to the Canadian Constitution, namely the British North America Act (No. 2) 1949, is, in our view, appropriate and desirable.

It is our considered opinion that in constitutional matters and in those relating to Canadian intergovernmental relations, the Supreme Court of Canada should meet all the conditions required of a third arbitrator.

It is our deep conviction that the bi-racial character of our country, particularly the rights of the French speaking minority in Canada, should be fully and effectively recognized.

M. L. DUPLESSIS.

*Prime Minister and Attorney General  
 of the Province of Quebec.*

QUEBEC, August 11, 1950.

### PROVINCE OF NOVA SCOTIA

The suggestions of the Government of Nova Scotia respecting the classification of the Sections of the British North America Act, 1867 and other constitutional documents as to amendment procedure are set out in the tabulation annexed hereto.

In the extreme left-hand column are listed the Sections or Acts. Check marks in the following six columns indicate the view of this Province on the amendment procedure to be followed. A check mark in the seventh column opposite any Section indicates that this Province has no decided views on the amendment procedure to be followed, or is not concerned. A check mark in the eighth column indicates that further comment is to be made on the sheets following the tabulation.

Where the Province would be prepared to consider more than one method of amendment the first choice of the Province is indicated by the figure "1" opposite the Section, second choice by the figure "2".

| Sections<br>B.N.A.<br>Act | By<br>Parliament<br>only | By<br>Province<br>only | By<br>Parliament<br>and<br>Provinces<br>concerned | By<br>Parliament<br>and<br>Majority<br>of<br>Provinces | By<br>Parliament<br>and<br>all<br>Provinces | To be<br>repealed | No<br>special<br>views | See<br>further<br>Comment |
|---------------------------|--------------------------|------------------------|---|--|---|-------------------|------------------------|---------------------------|
| 1                         | 2                        | -                      | -   | 1  | -   | -                 | -                      | -                         |
| 3                         | -                        | -                      | -   | 1  | 2   | -                 | -                      | -                         |
| 4                         | -                        | -                      | -   | x  | -   | -                 | -                      | -                         |
| 5                         | -                        | -                      | -   | -  | -   | x                 | -                      | x                         |
| 6                         | -                        | -                      | x   | -  | -   | -                 | -                      | x                         |
| 7                         | -                        | -                      | x   | -  | -   | -                 | -                      | x                         |
| 8                         | -                        | -                      | -   | 2  | 1   | -                 | -                      | -                         |
| 9                         | -                        | -                      | -   | -  | x   | -                 | -                      | -                         |
| 10                        | 1                        | -                      | -   | 2  | -   | -                 | -                      | -                         |
| 11                        | 1                        | -                      | -   | 2  | -   | -                 | -                      | -                         |
| 12                        | x                        | -                      | -   | -  | -   | -                 | -                      | -                         |
| 13                        | 1                        | -                      | -   | 2  | -   | -                 | -                      | -                         |
| 14                        | x                        | -                      | -   | -  | -   | -                 | -                      | -                         |
| 15                        | x                        | -                      | -   | -  | -   | -                 | -                      | -                         |
| 16                        | x                        | -                      | -   | -  | -   | -                 | -                      | -                         |
| 17                        | -                        | -                      | -   | -  | x   | -                 | -                      | -                         |
| 18                        | 1                        | -                      | -   | 2  | -   | -                 | -                      | -                         |
| 19                        | -                        | -                      | -   | -  | -   | x                 | -                      | -                         |
| 20                        | -                        | -                      | -   | -  | x   | -                 | -                      | -                         |
| 21                        | -                        | -                      | -   | -  | x   | -                 | -                      | x                         |
| 22                        | -                        | -                      | -   | -  | x   | -                 | -                      | -                         |
| 23                        | x                        | -                      | -   | -  | -   | -                 | -                      | x                         |
| 24                        | x                        | -                      | -   | -  | -   | -                 | -                      | -                         |
| 26                        | -                        | -                      | -   | 2  | 1   | -                 | -                      | -                         |
| 27                        | -                        | -                      | -   | 2  | 1   | -                 | -                      | -                         |
| 28                        | -                        | -                      | -   | 1  | 2   | -                 | -                      | -                         |
| 29                        | -                        | -                      | -   | 2  | 1   | -                 | -                      | -                         |
| 30                        | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 31                        | 1                        | -                      | -   | 2  | -   | -                 | -                      | -                         |
| 32                        | 1                        | -                      | -   | 2  | -   | -                 | -                      | -                         |
| 33                        | 1                        | -                      | -   | 2  | -   | -                 | -                      | -                         |
| 34                        | 1                        | -                      | -   | 2  | -   | -                 | -                      | -                         |
| 35                        | 1                        | -                      | -   | 2  | -   | -                 | -                      | -                         |
| 36                        | 1                        | -                      | -   | 2  | -   | -                 | -                      | -                         |
| 37                        | -                        | -                      | -   | -  | -   | x                 | -                      | x                         |
| 38                        | 1                        | -                      | -   | 2  | -   | -                 | -                      | -                         |



| Sections<br>B.N.A.<br>Act | By<br>Parliament<br>only | By<br>Province<br>only | By<br>Parliament<br>and<br>Provinces<br>concerned | By<br>Parliament<br>and<br>Majority<br>of<br>Provinces | By<br>Parliament<br>and<br>all<br>Provinces | To be<br>repealed | No<br>special<br>views | See<br>further<br>Comment |
|---------------------------|--------------------------|------------------------|---|--|---|-------------------|------------------------|---------------------------|
| 39                        | 1                        | -                      | -   | 2  | -   | -                 | -                      | -                         |
| 40                        | 2                        | -                      | -   | -  | -   | 1                 | -                      | -                         |
| 41                        | 2                        | -                      | -   | -  | -   | 1                 | -                      | -                         |
| 44                        | 1                        | -                      | -   | 2  | -   | -                 | -                      | -                         |
| 45                        | 1                        | -                      | -   | 2  | -   | -                 | -                      | -                         |
| 46                        | 1                        | -                      | -   | 2  | -   | -                 | -                      | -                         |
| 47                        | 1                        | -                      | -   | 2  | -   | -                 | -                      | -                         |
| 48                        | 1                        | -                      | -   | 2  | -   | -                 | -                      | -                         |
| 49                        | 1                        | -                      | -   | 2  | -   | -                 | -                      | -                         |
| 50                        | -                        | -                      | -   | -  | x   | -                 | -                      | -                         |
| 51                        | -                        | -                      | -   | -  | x   | -                 | -                      | -                         |
| 51A                       | -                        | -                      | -   | -  | x   | -                 | -                      | -                         |
| 52                        | -                        | -                      | -   | -  | x   | -                 | -                      | -                         |
| 53                        | x                        | -                      | -   | -  | -   | -                 | -                      | x                         |
| 54                        | x                        | -                      | -   | -  | -   | -                 | -                      | x                         |
| 55                        | x                        | -                      | -   | -  | -   | -                 | -                      | x                         |
| 56                        | x                        | -                      | -   | -  | -   | -                 | -                      | x                         |
| 57                        | x                        | -                      | -   | -  | -   | -                 | -                      | x                         |
| 58                        | -                        | -                      | -   | x  | -   | -                 | -                      | x                         |
| 59                        | 1                        | -                      | -   | 2  | -   | -                 | -                      | -                         |
| 60                        | -                        | -                      | -   | x  | -   | -                 | -                      | -                         |
| 61                        | 1                        | -                      | -   | 2  | -   | -                 | -                      | -                         |
| 62                        | 1                        | -                      | -   | 2  | -   | -                 | -                      | -                         |
| 63                        | -                        | 1                      | -   | -  | -   | 2                 | -                      | -                         |
| 64                        | -                        | 1                      | -   | -  | -   | 2                 | -                      | -                         |
| 65                        | -                        | 2                      | 1   | -  | -   | -                 | -                      | -                         |
| 66                        | -                        | -                      | 1   | 2  | -   | -                 | -                      | -                         |
| 67                        | 1                        | -                      | -   | 2  | -   | -                 | -                      | -                         |
| 68                        | -                        | 1                      | 2   | -  | -   | -                 | -                      | -                         |
| 69                        | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 70                        | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 71                        | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 72                        | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 73                        | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 74                        | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 75                        | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |

| Sections<br>B.N.A.<br>Act | By<br>Parliament<br>only | By<br>Province<br>only | By<br>Parliament<br>and<br>Provinces<br>concerned | By<br>Parliament<br>and<br>Majority<br>of<br>Provinces | By<br>Parliament<br>and<br>all<br>Provinces | To be<br>repealed | No<br>special<br>views | See<br>further<br>Comment |
|---------------------------|--------------------------|------------------------|---|--|---|-------------------|------------------------|---------------------------|
| 76                        | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 77                        | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 78                        | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 79                        | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 80                        | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 82                        | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 83                        | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 84                        | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 85                        | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 86                        | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 87                        | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 88                        | -                        | 1                      | 2   | -  | -   | -                 | -                      | -                         |
| 90                        | -                        | -                      | -   | -  | -   | -                 | -                      | x                         |
| 91 (1)                    | -                        | -                      | -   | -  | -   | x                 | -                      | -                         |
| 91 ex. (1)                | -                        | -                      | -   | x  | -   | -                 | -                      | x                         |
| 92<br>12 and 14           | -                        | -                      | -   | -  | x   | -                 | -                      | -                         |
| 92 ex.<br>12 and 14       | -                        | -                      | -   | x  | -   | -                 | -                      | x                         |
| 93                        | -                        | -                      | -   | -  | x   | -                 | -                      | -                         |
| 94                        | -                        | -                      | 2   | -  | -   | 1                 | -                      | -                         |
| 95                        | -                        | -                      | x   | -  | -   | -                 | -                      | x                         |
| 96                        | -                        | -                      | -   | x  | -   | -                 | -                      | -                         |
| 97                        | -                        | -                      | x   | -  | -   | -                 | -                      | -                         |
| 98                        | -                        | -                      | x   | -  | -   | -                 | -                      | -                         |
| 99                        | -                        | -                      | -   | -  | x   | -                 | -                      | -                         |
| 100                       | -                        | -                      | -   | x  | -   | -                 | -                      | -                         |
| 101                       | -                        | -                      | -   | x  | -   | -                 | -                      | -                         |
| 102                       | -                        | -                      | x   | -  | -   | -                 | -                      | -                         |
| 103                       | x                        | -                      | -   | -  | -   | -                 | -                      | -                         |
| 104                       | -                        | -                      | x   | -  | -   | -                 | -                      | -                         |
| 105                       | x                        | -                      | -   | -  | -   | -                 | -                      | -                         |
| 106                       | x                        | -                      | -   | -  | -   | -                 | -                      | -                         |
| 107                       | -                        | -                      | 2   | -  | -   | 1                 | -                      | -                         |
| 108                       | -                        | -                      | 2   | -  | -   | 1                 | -                      | -                         |
| 109                       | -                        | -                      | -   | -  | x   | -                 | -                      | -                         |
| 110                       | -                        | -                      | 1   | -  | -   | 2                 | -                      | -                         |

| Sections<br>B.N.A.<br>Act | By<br>Parliament<br>only | By<br>Province<br>only | By<br>Parliament<br>and<br>Provinces<br>concerned | By<br>Parliament<br>and<br>Majority<br>of<br>Provinces | By<br>Parliament<br>and<br>all<br>Provinces | To be<br>repealed | No<br>special<br>views | See<br>further<br>Comment |
|---------------------------|--------------------------|------------------------|---|--|---|-------------------|------------------------|---------------------------|
| 111                       | -                        | -                      | 2   | -  | 1   | -                 | -                      | -                         |
| 112                       | -                        | -                      | x   | -  | -   | -                 | -                      | -                         |
| 113                       | -                        | -                      | x   | -  | -   | -                 | -                      | -                         |
| 114                       | -                        | -                      | 1   | -  | -   | 2                 | -                      | -                         |
| 115                       | -                        | -                      | 1   | -  | -   | 2                 | -                      | -                         |
| 116                       | -                        | -                      | 1   | -  | -   | 2                 | -                      | -                         |
| 117                       | -                        | -                      | -   | 2  | 1   | -                 | -                      | -                         |
| 118                       | -                        | -                      | -   | -  | -   | -                 | -                      | x                         |
| 119                       | -                        | -                      | 2   | -  | -   | 1                 | -                      | -                         |
| 120                       | x                        | -                      | -   | -  | -   | -                 | -                      | -                         |
| 121                       | -                        | -                      | -   | -  | x   | -                 | -                      | -                         |
| 122                       | 2                        | -                      | -   | -  | -   | 1                 | -                      | -                         |
| 123                       | -                        | -                      | -   | -  | -   | x                 | -                      | -                         |
| 124                       | -                        | -                      | x   | -  | -   | -                 | -                      | -                         |
| 125                       | -                        | -                      | -   | x  | -   | -                 | -                      | x                         |
| 126                       | -                        | -                      | x   | -  | -   | -                 | -                      | -                         |
| 128                       | x                        | -                      | -   | -  | -   | -                 | -                      | -                         |
| 129                       | -                        | -                      | 2   | -  | -   | 1                 | -                      | -                         |
| 130                       | 2                        | -                      | -   | -  | -   | 1                 | -                      | -                         |
| 131                       | 2                        | -                      | -   | -  | -   | 1                 | -                      | -                         |
| 132                       | -                        | -                      | -   | 2  | -   | 1                 | -                      | -                         |
| 133                       | -                        | -                      | -   | -  | x   | -                 | -                      | -                         |
| 134                       | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 135                       | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 136                       | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 137                       | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 138                       | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 139                       | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 140                       | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 141                       | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 142                       | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 143                       | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 144                       | -                        | -                      | -   | -  | -   | -                 | x                      | -                         |
| 146                       | -                        | -                      | -   | x  | -   | -                 | -                      | x                         |
| 147                       | -                        | -                      | -   | x  | -   | -                 | -                      | x                         |



*Section 5:*

This Section should be repealed and brought up-to-date. Insofar as the substituted Section assigns names to the Provinces, such names should be alterable only with the consent of the Provinces concerned.

*Section 6:*

Compare the Canada (Ontario Boundary) Act, 1889. It is suggested that insofar as this Section merely settles the boundaries between Ontario and Quebec it might be amended with the concurrence of those Provinces. Insofar as any amendment might purport to affect extension of boundaries beyond those fixed by the 1889 Act, the consent of the majority of the Provinces should be required. Alternatively, Sections 6 and 7 might be repealed and a new Section substituted establishing the boundaries of all Provinces as at present constituted, which new Section would be amendable only with the consent of the Legislature of the Province or Provinces concerned, where only a boundary as between two Provinces is involved, and would be amendable only with the consent of a majority of the Legislatures of all the Provinces where it is proposed to add any territory to a Province.

*Section 21:*

Compare the British North America Act, 1915. It is suggested that the provisions of the 1915 Act should be incorporated in a new Section 21 and the provisions of the first 1949 amendment insofar as they affect this Section should also be incorporated. The new Section so substituted should then be amendable only with the consent of all the Provinces. The new Section would affirm the Senate as presently constituted.

*Section 23:*

Insofar as this Section requires specific qualification for Quebec Senators the consent of the Legislature of Quebec should be required for amendment.

*Section 37:*

This Section should be brought up-to-date and when this is done this Section should be amended only with the consent of a majority of the Legislatures.

*Sections 53 to 57 inclusive:*

These Sections must be read in conjunction with Section 90. It is proposed that Section 90 should be amended by removing the words "the assent to Bills, the disallowance of Acts and the signification of pleasure and Bills reserved". If this course were followed the Province would then have no objection to Sections 53 to 57 inclusive being amendable by the Parliament of Canada only. So long, however, as these Sections are still applicable to the Provinces by reason of the provisions of Section 90 the view of the Government of Nova Scotia is that these Sections should be amendable only with the consent of the majority of the Legislatures of the Provinces.

*Section 58:*

It is suggested that this Section might be altered to provide for the appointment of the Lieutenant Governor by the Province concerned, or in any event would give the Province a voice in the appointment of its own Lieutenant Governor.

*Section 90:*

See comments above with reference to Sections 53 to 57.

*Section 91:*

The Province realizes that the words used in the opening clause of Section 91 are such that abuse or even extreme use of the powers conferred by this Section would curtail very drastically the power of the Provinces, particularly in the taxation field. It is suggested that consideration should be given to substantive amendment to define more specifically the general power of the Parliament.

*Section 92:*

The Government of Nova Scotia would be prepared to consider alternatives, particularly in reference to Clause 13. It is felt, however, that on the whole the consent of a majority affords sufficient protection without limiting too drastically the flexibility of amendment.

*Section 95:*

It may be desirable to consider substantive amendment of this Section to clarify its meaning and the present state of affairs.

*Section 118:*

This Section is superseded by the British North America Act, 1907. It is suggested that the provisions contained in that Act should be amendable only with the consent of a majority of the Legislatures.

*Section 125:*

It is suggested that the Government of Canada should be able to decide on whether or not it shall permit any of its lands to be liable to taxation, and the Government of each Province should be in a similar position to decide the same question with respect to its lands. Insofar as Section 125 relates to lands or property belonging to Canada it should be amendable by the Parliament of Canada, and insofar as it relates to lands or property belonging to the Provinces, it should be amendable only by the Legislature of each Province.

*Sections 146 and 147:*

With these Sections must be read the British North America Act, 1871, the British North America Act, 1886, the British North America Act, 1949, Number One, and the Imperial Orders in Council admitting Rupert's Land and the North West Territory, British Columbia and Prince Edward Island into the Union and the Order in Council annexing islands and territories. It is suggested that Sections 146 and 147 should be repealed and a new Section substituted which would confirm the situation as it exists today and would make adequate provision for the admission of new colonies or territories and that such new Section should be amendable only with the consent of a majority of the Legislatures.

A new Section, preferably Section 148, should be added covering the amending procedure decided upon and that Section itself, when incorporated in the Statute, should be amendable only by the Parliament of Canada with the concurrence of all the Provinces.

The Government of Nova Scotia concurs with the opinion expressed by the Committee of Attorneys General that "the subject of delegation of powers should be placed upon the agenda."

## PROVINCE OF NEW BRUNSWICK

The Federal-Provincial Conference on Constitutional Amendment on the 12th day of January, 1950 passed a resolution, paragraph 2 of which reads as follows:

"Resolved that the Conference agree to:

1. . . .
2. Presentation to this committee with the least possible delay by the Federal Government and the Provincial Governments of their views respecting classification of each section of The B.N.A. Act, 1867, as amended, and all other Constitutional Acts of the United Kingdom Parliament or other constitutional documents relating to Canada."

This brief is submitted as a basis for discussion only and does not represent a fixed view or policy. The Government of New Brunswick, recognizing that reconciliation must be sought, is desirous of learning the views and opinions of the other members of the sub-committee and reserves the right to alter from time to time any submission contained herein.

The classification contained in this brief is in accordance with the formula set forth in the resolution of the sub-committee approved by the Conference on the 12th day of January, 1950.

We have interpreted all references to "Provincial Legislatures" in paragraph (1) of the said resolution as a reference to the Provinces. It is evident that the phrase "Provincial Legislature" is a more restrictive term than the word "Province." Many matters of vital concern to a Province do not concern the Provincial Legislature as such.

We have realized the impossibility of assigning a section to a particular head under the formula without regard to the nature of any amendment to the section that might be proposed and its effect on the subject matter of other sections. Consequently in interpreting and applying the formula we have, in assigning a section number under a particular head, assigned under that head solely the power of amendment over or in connection with the subject matter of the section and not the section itself.

In some instances the power of amendment is divided. In certain of its aspects the subject matter of a section may be subject to one amending procedure and in other aspects to another amending procedure under the formula presented.

In assigning to head (5) a section which we have also assigned to one of the heads (1) to (4), inclusive, we indicate that in some aspects only the power of amendment over or in connection with the subject matter of that section is subject to the amending procedure attached to head (5) and to that extent the section is removed from the heads (1) to (4), inclusive, in which it has been placed.

In assigning a section to two of the heads (1) to (4), inclusive, we indicate that the power of amendment over or in connection with the subject matter of that section is in some aspects subject to the amending procedure attached to one of the heads and in other aspects it is subject to the amending procedure attached to the other head.

All section references are to The British North America Act, 1867, unless otherwise indicated.

## PROPOSED DIVISION OF AMENDING POWERS

(1) *Provisions which concern Parliament only*

Section numbers: 10; 11; 12; 13; 14; 15; 18; 20; 23, except subsection (6); 24; 29; 30; 31; 32; 33; 34; 35; 36; 38; 39; 44; 45; 46; 47; 48; 49; 50; 53; 54; 55 (in some aspects—see head 6); 59; 60; 61; 67; 101; 102; 103; 105; 106; 120; 129 (in some aspects—see head 2).



(2) *Provisions which concern the Provincial Legislatures only*

Section numbers: 63; 64; 65; 66; 68; 69; 70; 71; 72; 73; 74; 75; 76; 77; 78; 79; 80; 82; 83; 84; 85; 86; 87; 88; 90; 92 (1) (in some aspects—see head 5) 109; 110; 113; 126; 129 (in some aspects—see head 1); 138.

(3) *Provisions which concern Parliament and one or more but not all of the Provincial Legislatures*

Section numbers: 5 (in some aspects—see head 4); 6; 7; 23 (6); 51A; 94; 96 (in some aspects—see head 4); 97; 98; 111; 112; 114; 115; 116; 117; 124.

(4) *Provisions which concern Parliament and all of the Provincial Legislatures*

Section numbers: 3; 4; 5 (in some aspects—see head 3); 8; 9; 16; 58; 62; 91; 92 (2), (3), (4), (5), (6), (7), (8), (9), (10), (11); 92 (13) (in some aspects—see head 5); 92 (16); 95; 96 (in some aspects—see head 3); 99; 100; 125; 128.

(5) *Provisions concerning fundamental rights (as for instance but without restriction, Education, Language, Solemnization of Marriage, Administration of Justice, Provincial Property in Lands, Mines and Other Natural Resources) and the amendment of the amending procedure*

Section numbers: 17; 37; 51; 52; 92 (1) (in some aspects—see head 2); 92 (12); 92 (13) (in some aspects—see head 4); 92 (14), (15); 93; 121; 132; 133; B.N.A. Act 1915, sections 1 and 2.

(6) *Provisions which should be repealed*

Section numbers: 19; 21 and 22 (see B.N.A. Act, 1915); 26; 27; 28 (see B.N.A. Acts, 1915 and 1949 No. 1); 40 (see the Representation Act, 1947); 55 (in some aspects—see head 1); 56; 57; 122; 123; 130; 131; 146; 147.

Submitted on behalf of the Province of New Brunswick.

JOHN B. McNAIR

*Attorney General.*

FREDERICTON, N.B.

March 20, 1950.

## PROVINCE OF MANITOBA

*Manitoba's submission respecting the grouping of provisions of the British North America Acts, 1867-1949, and other Constitutional Acts under the Heads set out in the Report of the Committee of Attorneys-General to the Constitutional Conference of Federal and Provincial Governments of January 12, 1950*

## EXPLANATORY NOTE

Where a number only is used the reference is to a section of the British North America Act, 1867.

Where a number is used followed by a year the reference is to a section of the British North America Act of the year mentioned.

Where a number is followed by the abbreviations "Man.", "Sask.", "Alta.", the reference is to the Manitoba Act, the Saskatchewan Act and the Alberta Act respectively.

Where a number is used followed by the abbreviations "B.C.", "P.E.I.", the reference is to a section of the Orders in Council admitting British Columbia and Prince Edward Island to the Union.

(1) 1949 refers to the British North America Act dealing with the admission of Newfoundland.

(2) 1949 refers to the Act adding class 1 to section 91.

Where comment is being made the reference will be followed by a number in brackets indicating where the comment will be found.

#### HEAD 1

8

10-17 both inclusive

18 as re-enacted by Sec. 1-1875

20-24 both inclusive

26-36 both inclusive

38, 39

44-50 both inclusive

51 as re-enacted by Sec. 1 - 1946

51A as enacted by 2 - 1915

52, 53, 54

102-106 both inclusive

108

120

122

125 (7)

128 (8)

131

146, 147 (1)

4 - 1871

2 - 1875

1 - 1886

Canadian Speaker (Appointment of Deputy) Act, 1895

1 - 1915 (12)

#### HEAD 2

63, 64, 65

68 - 80 both inclusive

82-88 both inclusive

Sub-section 1 of Sec. 92 in so far as it relates to the amendment of the constitution of a province.

109

113

125 (7)

126 (1)

128 (8)

134 - 140 both inclusive (1)

144

#### HEAD 3

6, 7

97, 98

111, 112 (1)

114, 115 (1)

116

117 (1)

118

124 (6)

129

143

5, 6 - 1871

Canada (Ontario Boundary) Act, 1889 (10)  
 1 - 1907 (11)  
 1, 2 - 1930  
 23 - 29 both inclusive of Schedule to (1) 1949

## HEAD 4

3, 4, 5 (1)  
 9  
 58 - 62 both inclusive  
 66, 67  
 90 (4)  
 91, including sub-section 2A as enacted by 1 - 1940  
 92 except sub-section 1 in so far as it relates to the amendment of the  
     constitution of a province and sub-section 12 - (5)  
 95, 96  
 99, 100, 101  
 132  
 2, 3 - 1871 (9)

## HEAD 5

Sub-section 12 of 92

93  
 121  
 133  
 22, Man.  
 17, Alta.  
 17, Sask.

(The procedure to amend the Constitution should be included under this Head).

## HEAD 6 (16)

19  
 37 (2)  
 40, 41 (3)  
 55, 56, 57  
 94  
 107  
 110  
 119  
 123  
 130  
 141, 142  
 2 - 1886  
 1 - 1943  
 2 - Man., 3 - Alta., 3 - Sask.,  
     3 - (1) 1949, 10 - B.C., 14 - P.E.I., (13)  
     (2) 1949 - (15)

Provisions of the Man. Act, Alta. Act, Sask. Act, B.C. O/C., P.E.I. O/C.,  
 B.N.A. Act, (1) 1949, not otherwise dealt with. (14.)



## COMMENT

(1) These sections are spent either in whole or in part and consideration could be given to repeal in whole or in part.

(2) This section has been repealed by implication by Section 51 as enacted by B.N.A. Act, 1946.

(3) These sections are spent as they have been superseded by legislation of the Parliament of Canada.

(4) By reason of the suggested repeal of Sections 55-57 which deal *inter alia* with disallowance of legislation of the Parliament of Canada it may be thought advisable to give consideration to the question of whether some form of disallowance should be retained in respect of Provincial legislation or whether it should be eliminated.

(5) Sub-sections (13) and (14) have been included under Head 4 subject to the qualifications that provision be made for preservation of the Civil Code in Quebec. Section 91 and the greater part of Section 92 have been included under Head 4 for the purpose of avoiding rigidity in respect of legislative powers.

(6) Consideration should be given to the repeal of this section.

(7) Section 125 has been included under Heads 1 and 2 with the intention that land or property of Canada be dealt with by the Parliament of Canada and land or property of a Province be dealt with by the Provincial Legislature of such Province.

(8) Section 128 has been included under Heads 1 and 2 as it relates to the respective constitutions of Canada and each Province.

(9) These sections have been included under Head 4. However, provision should be made that if in the creation of a new province the boundaries of an existing province will be affected consent of the province affected be required.

(10) This Act can be changed under the provisions of Section 3 - 1871.

(11) The Provincial Subsidies Act being Ch. 192 R.S.C. 1927 and The Maritime Provinces Additional Subsidies Act being Ch. 14 S.C. 1942 provide for additional subsidies to the Provinces. A saving clause will be required either in the Constitution or in the said Acts so that no change will be made in the statutory subsidy payable to a Province unless the Government of the Province concerned and the Government of Canada reach agreement.

(12) Section 1 of 1915 amends Sections 21, 22, 26, 27, 28, and 147.

(13) As the Constitution when redrawn will apply to all provinces these sections can be repealed.

(14) Except in respect of Sections 2 - Man., 3 - Alta., 3 - Sask., 3 - (1) 1949, 10 - B.C., 14 - P.E.I., 22 - Man., 17 - Alta., 17 - Sask., and 23 - 29 both inclusive of Schedule to (1) 1949 which have been dealt with under other Heads, the provisions of these Acts relate to the constitutions of the respective provinces and representation in the Parliament of Canada. As the provinces have power over their own constitutions the provisions which relate to the constitution of a province can be dealt with by the province concerned. The provisions which relate to representation in the Parliament of Canada should go under the same Head as the provisions of the B.N.A. Act, 1867, which deal with representation.

(15) The B.N.A. Act, (2) 1949 has been included under this Head in view of the suggestion that if an overall plan of amendment were agreed upon consideration could be given to the repeal of this Act.

(16) It has been assumed that provisions will be enacted dealing with the effect of repeal and amendment similar to those found in interpretation Acts.

## PROVINCE OF BRITISH COLUMBIA

*Submission by the Attorney-General of British Columbia as to the Classification of the sections of the B.N.A. Act into the groups suggested by the Attorneys-General Committee of the Constitutional Conference*

Suggested Classification of the British North America Act and amending Acts according to the classifications suggested by the Committee of Attorneys-General at the Constitutional Conference of January, 1950. The following are the classifications:

- (1) Provisions which concern parliament only:  
(Amendment shall be made by an Act of the Parliament of Canada)
- (2) Provisions which concern the Provincial Legislatures only:  
(Amendment shall be made by an Act of the Provincial Legislatures)
- (3) Provisions which concern parliament and one or more but not all of the Provincial Legislatures:  
(Provision be made for amendment by an Act of the Parliament of Canada and an Act of the Legislatures of each of the provinces affected)
- (4) Provisions which concern parliament and all of the Provincial Legislatures:  
(Provision be made for amendment by an Act of Parliament of Canada and Acts of such majority of the Legislatures and upon such additional conditions, if any, as may be decided upon)
- (5) Provisions concerning fundamental rights such as education, language, marriage, etc:  
(Amendment by an Act of the Parliament of Canada and Acts of the Legislatures of all the Provinces)
- (6) Provisions which should be repealed:  
(Conference did not make any suggestion as to what Parliament or majority of Provincial Legislatures should decide upon the question of the sections to be repealed)

*Classification No. (1)*

- Section 9—Declaration of Executive Power in the Queen.
- Section 10—Application of Provisions referring to Governor General.
- Section 11—Constitution of Privy Council for Canada.
- Section 13—Application of Provisions referring to Governor General in Council.
- Section 14—Power to Her Majesty to authorize Governor General to appoint Deputies.
- Section 15—Command of Armed Forces to continue to be vested in the Queen.
- Section 17—Constitution of Parliament of Canada.
- Section 18—Privileges, etc., of Houses.
- Section 20—Yearly Session of the Parliament of Canada.
- Section 23—Qualifications of Senator. (except sub-sec. (6)).
- Section 24—Summons of Senator.
- Section 30—Resignation of Place in Senate.
- Section 31—Disqualification of Senators.
- Section 32—Summons on Vacancy in Senate.
- Section 33—Questions as to Qualifications and Vacancies in Senate.
- Section 34—Appointment of Speaker of Senate.

- Section 35—Quorum of Senate.
- Section 36—Voting in Senate.
- Section 38—Summoning of House of Commons.
- Section 39—Senators not to sit in House of Commons.
- (?) Section 40—Electoral Districts of the four Provinces.
- Section 44—As to Election of Speaker of House of Commons.
- Section 45—As to filling up Vacancy of Office of Speaker.
- Section 46—Speaker to preside.
- Section 47—Provision in case of absence of Speaker.
- Section 48—Quorum of House of Commons.
- Section 49—Voting in House of Commons.
- Section 50—Duration of House of Commons.
- Section 52—Increase of number of House of Commons.
- Section 53—Appropriation and tax Bills.
- Section 54—Recommendation of money votes.
- Section 55—Royal Assent to Bills, etc.
- Section 58—Appointment of Lieutenant-Governors of Provinces.
- Section 59—Tenure of office of Lieutenant-Governor.
- Section 61—Oaths, etc. of Lieutenant-Governor.
- Section 62—Application of provisions referring to Lieutenant-Governor.
- Section 67—Administration in absence, etc., of Governor.
- Section 101—General Court of Appeal, etc.
- Section 102—Creation of Consolidated revenue fund.
- Section 103—Expenses of Collection, etc.
- Section 105—Salary of Governor General.
- Section 106—Appropriation from time to time.
- Section 120—Form of payment.
- Section 128—Oath of Allegiance, etc.
- Section 131—Appointment of new officers.
- “The Parliament of Canada Act, 1875”
- “The Statute Law Revision Act, 1893”
- “The Canadian Speaker (Appointment of Deputy) Act, 1895”.
- “British North America Act, 1907”
- “The Statute Law Revision Act, 1927”
- “Order of Her Majesty in Council Admitting all British Territories and Possessions in North America and all Islands Adjacent thereto into the Union.”
- “The Statute Law Revision Act, 1927”

### *Classification No. 2*

- Section 22—Representation of Provinces in Senate.
- “In the case of Quebec each of the Twenty-four Senators representing that Province shall be appointed for One of the Twenty-four Electoral Divisions of Lower Canada specified in Schedule A to Chapter One of the Consolidated Statutes of Canada”
- Section 23—Qualifications of Senator — sub-section 6 only.
- Section 60—Salaries of Lieutenant-Governors.
- Section 63—Appointment of Executive Officers for Ontario and Quebec.
- Section 64—Executive Government of Nova Scotia and New Brunswick.
- Section 65—Powers to be exercised by Lieutenant-Governor of Ontario or Quebec with advice or alone.
- Section 66—Application of provisions referring to Lieutenant-Governor in Council.
- Section 68—Seats of Provincial Governments.
- Section 69—Legislature for Ontario.



- Section 70—Electoral Districts.
- Section 71—Legislature for Quebec.
- Section 72—Constitution of Legislative Council.
- Section 73—Qualification of Legislative Councillors.
- Section 74—Resignation, Disqualification, etc.
- Section 75—Vacancies.
- Section 76—Questions as to Vacancies, etc.
- Section 77—Speaker of Legislative Council.
- Section 78—Quorum of Legislative Council.
- Section 80—Constitution of Legislative Assembly of Quebec.
- Section 82—Summoning of Legislative Assemblies.
- Section 83—Restriction on election of holders of offices.
- Section 84—Continuance of existing election Laws.
- Section 85—Duration of Legislative Assemblies.
- Section 86—Yearly Session of Legislature.
- Section 87—Speaker, Quorum, etc.
- Section 88—Constitutions of Legislatures of Nova Scotia and New Brunswick.
- Section 90—Application to Legislatures of provisions respecting money votes, etc.
- Section 134—Appointment of executive officers for Ontario and Quebec.
- Section 135—Powers, duties, etc., of Executive Officers.
- Section 136—Great Seals.
- Section 138—As to errors in names.
- Section 139—As to issue of Proclamations before Union, to commence after Union.
- Section 140—As to issue of Proclamations after Union.
- Section 144—Constitution of townships in Quebec.

### *Classification No. 3*

- Section 6—Provinces of Ontario and Quebec.
- Section 7—Provinces of Nova Scotia and New Brunswick.
- Section 94—Legislation for uniformity of Laws in three Provinces.
- Section 97—Selection of Judges in Ontario, etc.
- Section 98—Selection of Judges in Quebec.
- Section 113—Assets of Ontario and Quebec.
- Section 114—Debt of Nova Scotia.
- Section 115—Debt of New Brunswick.
- Section 116—Payment of interest to Nova Scotia and New Brunswick.
- Section 118—Grants to Provinces.
- Section 119—Further grant to New Brunswick.
- Section 124—Lumber Dues in New Brunswick.
- Section 126—Provincial Consolidated revenue fund.
- Section 129—Continuance of existing Laws, Courts, Officers, etc.
- “The Canada (Ontario Boundary) Act, 1889”
- “The British North America Act, 1930”
- “Order of Her Majesty in Council Admitting Rupert’s Land and the North-Western Territory into the Union”
- “Order of Her Majesty in Council Admitting British Columbia into the Union”
- “Order of Her Majesty in Council Admitting Prince Edward Island into the Union”
- “British North America Act, 1949” (Number 1—Newfoundland)

*Classification No. 4*

- Section 1—Short Title.
- Section 3—Declaration of Union.
- Section 4—Declaration of Union.
- Section 5—Four Provinces.
- Section 8—Decennial Census.
- Section 12—All Powers under Acts to be exercised by Governor General with advice of Privy Council or alone.
- Section 16—Seat of Government of Canada.
- Section 21—Number of Senators.
- Section 22—Representation of Provinces in Senate.
- Section 26—Addition of Senators in certain cases.
- Section 27—Reduction of Senate to normal number.
- Section 28—Maximum number of Senators.
- Section 29—Tenure of Place in Senate.
- Section 37—Constitution of House of Commons in Canada.
- Section 90—Application to Legislature of provisions respecting money votes, etc.
- Section 91—Legislative Authority of Parliament of Canada.
- Section 92—In each Province the Legislature may exclusively make laws in relation to Matters coming within the Classes of Subjects next herein-after enumerated; that is to say,
  - 6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
  - 7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
  - 8. Municipal Institutions in the Province.
  - 9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
  - 10. Local Works and Undertakings other than such as are of the following Classes:
    - (a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province;
    - (b) Lines of Steam Ships between the Province and any British or Foreign Country;
    - (c) Such works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada or for the Advantage of Two or more of the Provinces.
  - 11. The Incorporation of Companies with Provincial Objects.
  - 15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
- Section 95—Concurrent powers of Legislation respecting Agriculture, etc.
- Section 96—Appointment of Judges.
- Section 99—Tenure of office of Judges of Superior Courts.
- Section 100—Salaries, etc., of Judges.
- Section 107—Transfer of stocks, etc.
- Section 108—Transfer of property in schedule.
- Section 110—Assets connected with Provincial debts.

- Section 111—Canada to be liable for Provincial debts.
- Section 112—Debts of Ontario and Quebec.
- Section 117—Provincial Public property.
- Section 121—Canadian manufactures, etc.
- Section 125—Exemption of Public Lands, etc.
- Section 132—Treaty obligations.
- Section 146—Power to admit Newfoundland, etc., into the Union.
- Section 147—As to Representation of Newfoundland and Prince Edward Island in Senate.
- "The British North America Act, 1871"
- "The British North America Act, 1886"
- "The British North America Act, 1915"
- "The British North America Act, 1940"

### *Classification No. 5*

- Section 51—New provision as to readjustment of representation in Commons.
- Section 51A—Constitution of House of Commons.
- Section 92—In each Province the Legislature may exclusively make laws in relation to Matters coming within the classes of Subjects next hereinafter enumerated; that is to say:—
  1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant-Governor.
  2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
  3. The borrowing of Money on the sole Credit of the Province.
  4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
  5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
  12. The solemnization of Marriage in the Province.
  13. Property and Civil Rights in the Province.
  14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
  16. Generally all Matters of a merely local or private Nature in the Province.
- Section 93—Legislation respecting Education.
- Section 133—Use of English and French Languages.
- "The British North America Act, 1946"
- "British North America Act, 1949" (Number 2—amending procedure)
- "British North America Act" — Section 148 — New proposed section containing the authority for the amendment of the Act.

### *Classification No. 6*

- Section 56—Disallowance by Order in Council of Act assented to by Governor General.
- Section 57—Signification of Queen's pleasure on Bill reserved.
- Section 104—Interest of Provincial public debts.
- Section 122—Continuance of customs and excise laws.
- Section 130—Transfer of officers to Canada.
- Section 137—Construction of temporary Acts.
- Section 141—Penitentiary.



Section 143—Division of records.

"British North America Act, 1943"

"British North America Act, 1949" (Number 2—Amending Procedure)

April 13, 1950.

#### PROVINCE OF PRINCE EDWARD ISLAND

The Submissions of the Government of the Province of Prince Edward Island as to the proper allocation of the various sections of the British North America Act and other Constitutional Documents, within the groups of classification for Amendment as agreed upon at the Dominion-Provincial Conference held in Ottawa, January tenth, nineteen hundred and fifty, are appended hereto.

J. WALTER JONES

*Premier*

CHARLOTTETOWN, Prince Edward Island,  
March 9, 1950.

#### GROUP ONE

##### *Provisions which concern Parliament only*

Sections 9-18, 20, 24-27, 30, 32-50, 52-54, 102-108, 122-123, 131-132, of B.N.A. Act.

Parliament of Canada Act, 1875.

B.N.A. Act, 1886.

#### GROUP TWO

##### *Provisions which concern the Provincial Legislatures only*

Sections 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 90, 96, 99, 100, 109, 110, 126.

#### GROUP THREE

##### *Provisions which concern Parliament and One or More but not all of the Provincial Legislatures*

Sections 5, 6, 7, 51A (B.N.A. Act 1915, sec. 2), 69-88, 98, 112-120, 124, 129, 134-144, 147, of B.N.A. Act.

B.N.A. Act, 1871, sections 3 and 6.

The Canada (Ontario Boundary) Act, 1889.

B.N.A. Act, 1907.

The P.E.I. Island Subsidy Act, 1912.

The Provincial Subsidies Act, R.S. 1927, Cap 192.

Maritime Provinces Additional Subsidies Act, 1942.

B.N.A. Act Amendment No. 1, 1949.

#### GROUP FOUR

##### *Provisions which concern Parliament and all of the Provincial Legislatures*

Sections 1, 4, 8, 21, 22, 23, 28, 29, 31, 51, 91, 92 with exceptions, 94, 95, 97, 146, of B.N.A. Act.

B.N.A. Act, 1871, section 2.

B.N.A. Act, 1915, except section 2.

#### GROUP FIVE

##### *Provisions concerning Fundamental Rights*

Preamble; Section 92, Subsections 12 and 14, 93, 101 (insofar as it affects the Supreme Court of Canada as a general and final Court of Appeal), 111, 121, 125, 128, 133.

## GROUP SIX

*Provisions which should be repealed*

Sections 3, 19, 55 in part, 56, 57, 130 of the B.N.A. Act.  
B.N.A. Act Amendment No. 2, 1949.

## PROVINCE OF SASKATCHEWAN

*Draft Classification of Provisions of the British North America Acts, 1867-1949,  
and Other Constitutional Acts Under Headings Adopted by the Constitutional  
Conference of Federal and Provincial Governments, January 12, 1950*

At the final session of the plenary conference it was agreed that the various governments, working independently, would classify the various parts of the pertinent constitutional documents under six specific heads. The following are the six heads agreed upon:

HEAD 1—Provisions which concern Parliament only—Amendment shall be made by an Act of Parliament of Canada.

HEAD 2—Provisions which concern the Provincial Legislatures only—Amendment shall be made by an Act of the Provincial Legislature.

HEAD 3—Provisions which concern Parliament and one or more but not all of the Provincial Legislatures—Provision shall be made for amendment by an Act of the Parliament of Canada and an Act of the Legislature of each of the Provinces affected.

HEAD 4—Provisions which concern Parliament and all of the Provincial Legislatures—Provision shall be made for amendment by an Act of the Parliament of Canada and Acts of such majority of the Legislatures and upon such additional conditions, if any, as may be decided upon.

HEAD 5—Provisions concerning fundamental rights—Amendment by an Act of the Parliament of Canada and Acts of the Legislatures of all the Provinces.

HEAD 6—Provisions which should be repealed.

It was the understanding of the Government of Saskatchewan that the purpose to be achieved by this procedure was to determine to what extent the various governments stood on common ground. It was the further understanding that each government would be provided with copies of the submissions of the other governments, and that the various submissions would receive intensive study by the parties concerned in an endeavour to reach a common understanding.

It is further understood that the various governments were expected to refrain from expressing opinions in addition to those called for by the problem of classification. For instance, the number of Legislatures whose assent would be required under Head 4 was to be left for future discussion.

The Government of Saskatchewan has made an effort to comply with the understanding noted. The classification that is submitted below represents a considered opinion on the various enactments involved. It should, however, be considered as merely tentative since in the case of many items nothing of a very fundamental nature is involved.

## TENTATIVE CLASSIFICATION

The pertinent constitutional documents are classified under heads 1 to 6, so far as this is practicable. In certain cases it seems evident that there should be amendments, or at least consolidations.

## HEAD 1—PROVISIONS WHICH CONCERN PARLIAMENT ONLY

*The British North America Act, 1867*

- Section 11. Constitution of Privy Council for Canada.
- Section 12. All Powers under Acts to be exercised by Governor General with advice of Privy Council or alone.
- Section 13. Application of Provisions referring to Governor General in Council.
- Section 14. Power to Her Majesty to authorize Governor General to appoint deputies.
- Section 15. Command of Armed Forces to continue to be vested in the Queen.
- Section 17. Constitution of Parliament of Canada.
- Section 18. Privileges, etc., of Houses.
- Section 21. Number of Senators. (As amended by 1915 amendment)
- Section 22. Representation of Provinces in Senate. (As amended 1915)
- Section 23. Qualification of Senator.
- Section 24. Summons of Senator.
- Section 26. Addition of Senators in certain cases.
- Section 27. Reduction of Senate to normal number.
- Section 28. Maximum number of Senators. (See 1915 amendment)
- Section 29. Tenure of Place in Senate.
- Section 30. Resignation of Place in Senate.
- Section 31. Disqualification of Senators.
- Section 32. Summons on Vacancy in Senate.
- Section 33. Questions as to Qualifications and Vacancies in Senate.
- Section 34. Appointment of Speaker of Senate.
- Section 35. Quorum of Senate.
- Section 36. Voting in Senate.
- Section 38. Summoning of House of Commons.
- Section 39. Senators not to sit in House of Commons.
- Section 40. Electoral districts of the four Provinces—1. Ontario. (see Representation Act 1947.)
- Section 41. Continuance of existing Election Laws until Parliament of Canada otherwise provides.
- Section 44. As to Election of Speaker of House of Commons.
- Section 45. As to filling up Vacancy in Office of Speaker.
- Section 46. Speaker to preside.
- Section 47. Provision in case of absence of Speaker.
- Section 48. Quorum of House of Commons.
- Section 49. Voting in House of Commons.
- Section 53. Appropriation and tax bills.
- Section 54. Recommendation of money votes.
- Section 55. Royal Assent to Bills, etc.
- Section 56. Disallowance by Order in Council of Act assented to by Governor General.
- Section 57. Signification of Queen's pleasure on Bill reserved.
- Section 102. Creation of Consolidated Revenue Fund.
- Section 103. Expenses of Collection, etc.
- Section 105. Salary of Governor General.
- Section 106. Appropriation from time to time.
- Section 120. Form of payments.
- Section 128. Oaths of Allegiance (as to that portion which refers to the Senate and House of Commons).
- Section 131. Appointment of new officers.
- Section 146. Power to admit Newfoundland, etc., into the Union.



*The British North America Act, 1871*

- Section 2. Parliament of Canada may establish new Province and provide for the constitution, etc., thereof.
- Section 4. Parliament of Canada may legislate for any territory not included in a Province.
- Section 5. Confirmation of Acts of Parliament of Canada, 32 and 33, Vict., (Canadian) cap. 3, 33 Vict., (Canadian), cap. 3.

*The British North America Act, 1886*

- Section 1. Provision by Parliament of Canada for representation of territories.
- Section 2. Effect of Acts of Parliament of Canada.

*The Canadian Speaker (Appointment of Deputy) Act, 1895*  
59 Victoria, Chapter 3.*The British North America Act, 1915*

- Section 1. Alteration of Constitution of Senate.

## HEAD 2—PROVISIONS WHICH CONCERN THE PROVINCIAL LEGISLATURES ONLY

*The British North America Act, 1867*

- Section 70. Electoral districts.
- Section 72. Constitution of Legislative Council.
- Section 73. Qualification of Legislative Councillors.
- Section 74. Resignation, Disqualification, etc.
- Section 75. Vacancies.
- Section 76. Questions as to Vacancies, etc.
- Section 77. Speaker of Legislative Council.
- Section 78. Quorum of Legislative Council.
- Section 79. Voting in Legislative Council.
- Section 80. Constitution of Legislative Assembly of Quebec.
- Section 83. Restriction of election of holders of office.
- Section 84. Continuance of existing election laws.
- Section 87. Speaker, Quorum, etc.
- Section 90. Application to Legislatures of provisions respecting money votes, etc., (Except as to disallowance and reservation of bills)
- Section 128. Oath of Allegiance, etc. (As to that portion pertaining to the provinces)
- Section 136. Great Seals.
- Section 140. As to issue of Proclamation after Union.
- Section 144. Constitution of townships in Quebec.

## HEAD 3—PROVISIONS WHICH CONCERN PARLIAMENT AND ONE OR MORE BUT NOT ALL OF THE PROVINCIAL LEGISLATURES

*The British North America Act, 1867*

- Section 6. Provinces of Ontario and Quebec.
- Section 7. Provinces of Nova Scotia and New Brunswick.
- Section 63. Appointment of Executive Officers for Ontario and Quebec.
- Section 64. Executive Government of Nova Scotia and New Brunswick.
- Section 65. Powers to be exercised by Lieutenant-Governor of Ontario or Quebec with advice or alone.
- Section 68. Seats of Provincial Governments.
- Section 82. Summoning of Legislative Assemblies.

- Section 94. Legislation for uniformity of Laws in three Provinces.
- Section 97. Selection of Judges in Ontario, etc.
- Section 98. Selection of Judges in Quebec.
- Section 109. Property in Lands, Mines, etc.
- Section 110. Assets connected with Provincial debts.
- Section 111. Canada to be liable for Provincial debts.
- Section 112. Debts of Ontario and Quebec.
- Section 113. Assets of Ontario and Quebec.
- Section 114. Debt of Nova Scotia.
- Section 115. Debt of New Brunswick.
- Section 116. Payment of interest to Nova Scotia and New Brunswick.
- Section 118. Grants to Provinces.
- Section 119. Further grant to New Brunswick.
- Section 124. Lumber Dues in New Brunswick.
- Section 129. Continuance of existing Laws, Courts, Officers, etc.
- Section 130. Transfer of officers to Canada.

*The British North America Act, 1871*

- Section 3. Alteration of limits of Provinces.
- Section 6. Limitation of powers of Parliament of Canada to legislate for an established Province.

*The British North America Act, 1907*

Payments to be made by Canada to Provinces.

*The British North America Act, 1930*

20-21 George V, Chapter 26

An Act to confirm and give effect to certain agreements entered into between the Government of the Dominion of Canada and the Governments of the Provinces of Manitoba, British Columbia, Alberta and Saskatchewan respectively. (Natural Resources Agreements).

HEAD 4—PROVISIONS WHICH CONCERN PARLIAMENT AND ALL OF THE  
PROVINCIAL LEGISLATURES.

*The British North America Act, 1867*

Preamble

- Section 1. Short Title.
- Section 3-4. Declaration of Union.
- Section 5. Four Provinces.
- Section 8. Decennial Census.
- Section 9. Declaration of Executive Power in the Queen.
- Section 10. Application of Provisions referring to Governor General.
- Section 16. Seat of Government of Canada.
- Section 58. Appointment of Lieutenant-Governor of Provinces.
- Section 59. Tenure of office of Lieutenant-Governor.
- Section 60. Salaries of Lieutenant-Governors.
- Section 61. Oaths, etc., of Lieutenant-Governor.
- Section 62. Application of provisions referring to Lieutenant-Governor.
- Section 66. Application of provisions referring to Lieutenant-Governor in Council.
- Section 67. Administration in absence, etc., of Governor.
- Section 91. Legislative Authority of Parliament of Canada.
- Section 92. Subjects of exclusive Provincial Legislation. (The whole, except heads 12 and 14).
- Section 95. Concurrent powers of Legislation respecting Agriculture, etc.

- Section 96. Appointment of Judges.
- Section 99. Tenure of office of Judges of Superior Courts. (Possible amendment for age limit).
- Section 100. Salaries, etc., of Judges.
- Section 101. General Court of Appeal, etc.
- Section 108. Transfer of property in schedule.
- Section 117. Provincial public property.
- Section 121. Canadian manufactures, etc.
- Section 125. Exemption of Public Lands, etc. (possibly amended).
- Section 132. Treaty obligations. (Suggest amendment to conform to present situation and give Dominion full powers).

#### HEAD 5—PROVISIONS CONCERNING FUNDAMENTAL RIGHTS

##### *The British North America Act, 1867*

- Section 20. Yearly Session of the Parliament of Canada.
- Section 50. Duration of House of Commons.
- Section 51. New provision as to readjustment of representation in Commons. 30 and 31 Vict., c. 3.
- Section 51A. Constitution of House of Commons. (1915, 5-6 George V, c. 45, s. 2)
- Section 52. Increase of number of House of Commons.
- Section 85. Duration of Legislative Assemblies. (Entrench at 5 years with uniform provision for all provinces.)
- Section 86. Yearly Session of Legislature. (Entrench and make general like 85.)
- Section 92. (12) The Solemnization of Marriage in the Province.
- Section 92. (14) The Administration of Justice in the Province, including the Constitution, Maintenance and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those courts.
- Section 93. Legislation respecting Education.
- Section 133. Use of English and French Languages.

##### *The British North America Act, 1915*

- Section 2. Constitution of House of Commons. (Section 51A added.)

##### *The British North America Act, 1946*

##### 10 George VI, Chapter 63

An Act to provide for the readjustment of representation in the House of Commons of Canada on the basis of the population of Canada.  
—the whole—

#### HEAD 6—PROVISIONS WHICH SHOULD BE REPEALED

##### *The British North America Act, 1867*

- Section 19. First Session of the Parliament of Canada.
- Section 37. Constitution of House of Commons in Canada. (See 51)
- Sections 69, 71 and 88 and equivalent sections in special Acts should be repealed and replaced by a new general section establishing provincial legislatures; (like sec. 17 for federal parliament).
- Section 69. Legislature for Ontario.
- Section 71. Legislature for Quebec.
- Section 88. Constitutions of Legislatures of Nova Scotia and New Brunswick.



- Section 90. As to disallowance and reservation of bills.  
 Section 104. Interest of Provincial public debts.  
 Section 107. Transfer of stocks, etc.  
 Section 122. Continuance of customs and excise laws.  
 Section 123. Exportation and Importation between two provinces.  
 Section 126. Provincial Consolidated Revenue Fund.  
 Section 134. Appointment of executive officers for Ontario and Quebec.  
     (Covered by 63)  
 Section 135. Powers, duties, etc., of Executive Officers.  
 Section 137. Construction of temporary Acts.  
 Section 138. As to errors in names.  
 Section 139. As to issue of Proclamations before Union, to commence after Union.  
 Section 141. Penitentiary.  
 Section 142. Arbitration respecting debts, etc.  
 Section 143. Division of records.  
 Section 147. As to Representation of Newfoundland and Prince Edward Island in Senate.

(superseded)

*The British North America Act, 1943*

7 George VI, Chapter 30

An Act to provide for the readjustment of the representation of the provinces in the House of Commons of Canada consequent on the decennial census taken in the year One thousand nine hundred and forty-one.

OTHER CONSTITUTIONAL DOCUMENTS

- A. In regard to the following documents, to wit:—  
 1. Order in Council admitting British Columbia, 1871.  
 2. Order in Council admitting P.E.I., 1873.  
 3. The Manitoba Act, 1870.  
 4. The Saskatchewan Act, 1905.  
 5. The Alberta Act, 1905.  
 6. The B.N.A. Act, 1949 (Newfoundland)

the general rule regarding amendments should be:

I. Insofar as these documents deal with general matters also covered in the B.N.A. Acts, the method of amendment shall be the same as that provided for the latter acts.

E.g., Section 17 of Newfoundland Act Schedule (on education) shall be classified in group 5.

II. If there are provisions in any of these Acts not similar in principle to provisions in the B.N.A. Acts 1867-1946, they shall be classified in group 3.

B. It is believed that other documents may be ignored, as repealed, superseded or spent.

CLARIFICATION

The following comments are made in order to clarify the position of the province:

(1) In the opinion of this Province an amendment should be procured forthwith confirming the legality of legislative delegation either by a province to the Dominion or vice versa.

(2) It is submitted that a short but emphatic Bill of Rights should be added to the constitution as an entrenched section (Head 5). Such a Bill of

Rights should prohibit legislation by Parliament or a legislature on certain fundamental matters, e.g. abridging freedom of speech or religion or suspending the right to *habeas corpus*.

(3) It is submitted that the proposal to entrench the amending procedure is unnecessarily inelastic.

(4) It is submitted that the consent of the Senate ought not to be a part of the amending procedure.

(5) With reference to The Statute of Westminster, 1931, and particularly section 7(1) thereof, it is submitted that a Constitution of Canada, embraced in one document, should be written and enacted. As a minimum this would consist of a consolidation of present valid constitutional documents. Section 7(1) would then be repealed.

Submitted on behalf of the Government of Saskatchewan.

J. W. CORMAN  
*Attorney General*

REGINA, SASK.,  
March 1, 1950.

#### PROVINCE OF ALBERTA

The Province of Alberta submits, for the consideration of the Committee of Attorneys General, the following classification and grouping of the British North America Acts, 1867 to 1949, and other Constitutional Acts or other Constitutional documents relating to Canada.

GROUP 1: *Concerning Parliament only.*

##### *British North America Act, 1867*

- Section 9-16 (Incl.) Executive Powers.
- Section 18. Privileges of Houses of Parliament.
- Section 24. Summons of Senators.
- Section 30. Resignations of Senators.
- Section 31. Disqualification of Senators.
- Section 32. Summons on Vacancy in Senate.
- Section 33. Questions on Qualifications and Vacancies in Senate.
- Section 34. Appointment of Speaker of Senate.
- Section 35. Quorum of Senate.
- Section 36. Voting in Senate.
- Section 38. Summoning House of Commons.
- Section 39. Senators not to sit in Commons.
- Section 44. Election of Speaker in Commons.
- Section 45. Vacancy in Office of Speaker.
- Section 46. Speaker to Preside.
- Section 47. Provision in absence of Speaker.
- Section 48. Quorum in Commons.
- Section 49. Voting in Commons.
- Section 53-54 (Incl.) Money Votes.
- Section 100. Salaries of Judges.
- Section 101. General Court of Appeal.
- Section 102-103 (Incl.) Consolidated Revenue Fund.
- Section 105. Salary of Governor General.
- Section 106. Appropriation for Public Service.
- Section 131. Appointment of new officers.

*Other Acts and Orders-in-Council:*

Rupert's Land Act, 1868.

The Parliament of Canada Act, 1875, (Validating Oaths Act).

The Statute Law Revision Act, 1893.

The Statute Law Revision Act, 1927.

The Canadian Speaker (Appointment of Deputy) Act, 1895.

Her Majesty's Order-in-Council admitting Rupert's Land and the Northwest Territory.

Her Majesty's Order-in-Council annexing Islands and Territories.

The Marriage and Divorce Act (R.S. 1927, c. 127) amendment of 1932 (chapter 10).

The Divorce Jurisdiction Act, 1930.

GROUP 2: *Concerning Provincial Legislatures Only.*

*British North America Act, 1867*

Section 58. Appointment of Lieutenant-Governor of Provinces.

Section 59. Tenure of Office of Lieutenant-Governor.

Section 60. Salaries of Lieutenant-Governor.

Section 61. Oath of Office of Lieutenant-Governor.

Section 62. Application of Provisions to Lieutenant-Governor.

Section 67. Administration in absence of Lieutenant-Governor.

Section 92(1) Amendment of provincial constitution except as regards office of Lieutenant-Governor.

GROUP 3: *Concerning Parliament and one or more but not all the Provincial Legislatures.*

*British North America Act, 1867*

Section 6. Ontario and Quebec constituted.

Section 7. Affecting Nova Scotia and New Brunswick.

Section 23(6) Real property qualification of Senate in Quebec.

Section 63. Appointment of Executive Council of Ontario and Quebec.

Section 64. Affecting Nova Scotia and New Brunswick.

Section 65. Affecting Ontario and Quebec.

Section 68. Seats of Government, Ontario, Quebec, Nova Scotia, and New Brunswick.

Section 69. Providing a Legislature for Ontario.

Section 70. Providing Electoral Districts for Ontario.

Section 71-80 (Incl.) Relating to Legislature of Quebec.

Section 82-87 (Incl.) Relating to Ontario and Quebec.

Section 88. Relating to Nova Scotia and New Brunswick.

Section 97. Selection of Judges in Ontario, Nova Scotia and New Brunswick.

Section 98. Selection of Judges in Quebec.

Section 114. Limitation of debt of Nova Scotia.

Section 115. Limitation of debt of New Brunswick.

Section 116. Payment of interest to Nova Scotia and New Brunswick re public debts.

Section 118. Grants to Provinces.

Section 119. Grant to New Brunswick.

Section 120. Form of payment to Provinces.

Section 124. Lumber dues in New Brunswick.

Section 129. Continuing of existing laws in Ontario, Quebec, Nova Scotia and New Brunswick.

Section 138. As to errors in names.

Section 143. Division of records, Ontario and Quebec.

Section 144. Constitution of Townships in Quebec.

Section 147. As to Representation of Newfoundland and Prince Edward Island.



Section 6 of the British North America Act, 1871 (as to alterations of the boundaries of Manitoba).

The Canada (Ontario Boundary) Act, 1889.

Her Majesty's Order-in-Council admitting British Columbia.

Her Majesty's Order-in-Council admitting Prince Edward Island.

All of the Acts of Canada as shown on page 6 of the Table of Contents in "British North America Acts and Selected Statutes, 1867-1948."

These Acts are Acts of Canada passed pursuant to the British North America Act and constitute the constitutions of various Provinces and agreements between Canada and the various Provinces. Most of these Acts were ratified by the United Kingdom Parliament.

The British North America No. 1 Act, 1949, relating to the union of Newfoundland.

GROUP 4: *Concerning Parliament and all of the Provincial Legislatures.*

*British North America Act, 1867*

- Section 1. Short Title.
- Section 3. Declaration of Union.
- Section 5. Division of Canada into four Provinces.
- Section 8. Decennial Census.
- Section 16. Seat of Government at Ottawa.
- Section 17. Constitution of Parliament of Canada.
- Section 20. Yearly Session of Parliament.
- Section 21. Number of Senators.
- Section 22. Representation of Provinces in Senate.
- Section 23. Except (6) Qualification of Senator.
- Section 26. Addition of Senators.
- Section 27. Reduction of Senate.
- Section 28. Maximum number of Senators.
- Section 29. Tenure of place in Senate.
- Section 37. Constitution of Commons.
- Section 40. Electoral Districts in four Provinces.
- Section 50. Duration of House of Commons.
- Section 52. Increase in number of House of Commons.
- Section 66. Provisions referring to Lieutenant-Governor.
- Section 91. Legislative authority of Parliament.
- Section 92. Legislative authority of Provinces except Section 12.
- Section 94. Uniformity of Laws in Provinces.
- Section 95. Concurrent Powers re Agriculture.
- Section 96. Appointment of Judges.
- Section 99. Tenure of Office of Judges.
- Section 109. Property in Lands, etc.
- Section 111. Canada to be liable for Provincial debts.
- Section 112. Liability of Ontario and Quebec to Canada.
- Section 117. Provincial public property.
- Section 121. Articles of Growth to be admitted free into Provinces.
- Section 125. Exemption Public land from Taxation.
- Section 128. Oath of Allegiance of Members of Senate and Commons and Legislatures.
- Section 132. Treaty obligations.
- Section 146. Admission of new areas.

*Other Acts:*

- The British North America Act 1871 (except section 6), Establishment of new Provinces.
- The British North America Act 1886 (Representation of Territories).
- The British North America Act, 1907 (Provincial subsidies).
- The British North America Act, 1915, (Alteration of the Constitution of the Senate).
- The Statute Law Revision Act, 1927.
- The British North America Act, 1930 (Agreements with Western Provinces).
- The British North America Act, 1940 (Unemployment Insurance).
- The British North America Act, 1943 (Readjustment of representation).
- The British North America Act, 1946 (Readjustment of representation).
- The Statute of Westminster, 1931.

GROUP 5: *Concerning Fundamental Rights**British North America Act, 1867*

- Section 51. Decennial readjustment.
- Section 51A Representation in House of Commons.
- Section 92(12) Solemnization of Marriage in the Province.
- Section 93. Education.
- Relevant sections of other Federal Acts relating to Education.
- Section 133. Use of English and French language.
- Method of Amendment of the British North America Act as herein set forth.

GROUP 6: *Provisions which should be repealed.*

## Sections of Act to be repealed:

- (1) All sections of the Act the force of which has been spent.
- (2) Section 55—Withholding Royal Assent.
- Section 56—Disallowance.
- Section 57—Reservation of Bills.
- Section 90—Powers of Governor General re disallowance and reservation.
- British North America (No. 2) Act, 1949.

## PROVINCE OF NEWFOUNDLAND

The Province of Newfoundland has not been part of the Dominion for a sufficiently long time to be able to determine, in the light of experience, the proper distribution of all of the provisions of the British North America Acts.

We have, however, endeavoured to tabulate the various sections as suggested in the Report of the Attorneys General, but in many cases we would be prepared, after discussion, to agree to such reclassification as the other Provinces, as a result of their longer experience, might recommend.

LESLIE R. CURTIS,  
*Attorney General of Newfoundland.*

## HEAD 1

8

10-18 both inclusive.

20

23 (except 6)

24

30-32 both inclusive.

36

38

39

44-54 both inclusive.

102

103

105

106

120

122

125 (Canada)

128 (Canada)

131

146

(1871) 2, 4.

(1875) 2.

(1886) 1.

(1895) 1.

## HEAD 2

63-65 both inclusive.

68

69-88 both inclusive.

109

113

125 (Provinces)

126

128 (Provinces)

134-136 both inclusive.

138-140 both inclusive.

144

## HEAD 3

6

7

23 (6)

94

97

98

111

112

114-118 both inclusive.

124

129

143

(1871) 3, 5, 6.

(1907) 1.

(1930) 1 and 2.



## HEAD 4

3  
 4  
 5  
 9  
 21  
 22  
 26-29 both inclusive.  
 58-62 both inclusive.  
 66  
 67  
 90  
 91  
 92  
 95  
 96  
 99-101 both inclusive.  
 132  
 147  
 (1915) 1.

## HEAD 5

93  
 121  
 133

## HEAD 6

19  
 37  
 40  
 41  
 55-57 both inclusive.  
 104  
 107  
 108  
 110  
 119  
 123  
 130  
 137  
 141  
 142  
 (1886) 2.  
 (1943) 1.

Proposed arrangement of provisions of Terms of Union of Newfoundland with Canada contained in the Schedule to the British North America Act, 1949.

## HEAD 1

6  
 11 (a)  
 12  
 36

HEAD 2  
10  
11 (b)  
13  
14  
15  
37

HEAD 3  
3  
4  
5  
18  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
31  
32  
33  
34  
35  
38  
39  
40  
41  
42  
44  
45  
47  
49

HEAD 4  
8  
30

HEAD 5  
1  
2  
7  
9  
17  
43  
46  
48  
50

HEAD 6  
16  
19

## APPENDIX V

### Press Statement

The Constitutional Conference of Federal and Provincial Governments has discussed at Ottawa and in Quebec City the constitutional position and the procedure by which amendment of the present constitution could be effected in Canada.

The Conference has had a full and frank discussion of the principles applicable to such a general amending procedure and has reached agreement on many of them. Its members are unanimously of the opinion that substantial progress has been made and are exceedingly gratified at the spirit of harmony and co-operation which has been shown by all delegates throughout the whole of the proceedings.

Important sections of the Constitution involving what are considered fundamental and basic rights of the provinces were studied at length and considerable progress towards agreement has been made. Various formulae for amendment were submitted which, while having in view the safeguarding of these basic rights, would assure adequate flexibility in the constitution.

The Conference has requested the Continuing Committee of Attorneys General to study the proposals which it received with a view to arriving at an amending procedure satisfactory to all governments concerned. The Continuing Committee met to-day in the late afternoon and agreed that the Provincial Attorneys General and the Minister of Justice would exchange views by correspondence leading up to a meeting to be held at Ottawa on November 13, 1950 in order that the matters referred to it might be further considered and a report prepared for submission to a third plenary session of the Constitutional Conference to be held immediately after the Federal-Provincial Conference on fiscal and other matters which is to meet in Ottawa on December 4, 1950.

The Continuing Committee has also been authorized to study the methods and techniques whereby a Canadian Constitution can be domiciled in Canada as a purely Canadian instrument.

QUEBEC: 9.00 p.m.  
September 28, 1950.





## INDEX

ALBERTA, *see* Manning, Hon. E. C.

Submission to Committee of Attorneys General, 124

### AMENDMENTS TO THE CONSTITUTION

Amending clause, *see* Constitution

British North America Act, *see* that title, *see also* Constitution

Civil Rights, *see under this title*, Property and Civil Rights

Constitution, *see that title*

Delegation of powers, 36

Disallowance, 25, 26

Entrenched clauses, 35, 36, 40

Federal government, powers of, 34, 35

Fundamental rights, 7, 24, 35, 48

Markets and marketing, 34

Old age pensions, 46

Ontario formula for, 15-17, 27, 29, 33, 48

Property and civil rights, 26, 27, 34, 35, 48

Provinces, *see that title*

Rigidity, 35, 36

Social security, *see that title*

United Kingdom, 22

ATTORNEYS GENERAL, *see* Committee of Attorneys General

AUTONOMY, 44, 45

BRITISH COLUMBIA, *see also* Johnson, Hon. Byron I.

Submission to Committee of Attorneys General, 112

BRITISH NORTH AMERICA ACT, *see also* Constitution

Amendment, 1949, No. 2, 12

Amendment, lack of procedure for, 28, 47

Groups of provisions falling under various methods of amendment, 10, 11, 24, 52, *see also* Constitution, division of

Making it a Canadian document, *see* Constitution

Repeal of sections, 38

CAMPBELL, Hon. DOUGLAS L. (Premier of Manitoba), 22, 51, 62

Amendment, method of, 23, 24

Category (4), procedure for, 24

Classification of sections for amendment, 24

Conference, procedure of, 51

Constitution a Canadian document, 51

Crown property, taxation of, 25

Disallowance, 25, 26

Flexibility, 27

Fundamental rights, 24

Judges, appointment of, 25

Ontario formula for amendment, 27

Property and civil rights, 26, 27

CIVIL RIGHTS, *see* Amendments to the Constitution

CLASSIFICATION OF PROVISIONS, for purpose of amendment, *see* Constitution

### COMMITTEE OF ATTORNEYS GENERAL

Briefs submitted to, Canada, 86; Ontario, 92; Quebec, 98; Nova Scotia, 100; New Brunswick, 107; Manitoba, 108; British Columbia, 112; Prince Edward Island, 117; Saskatchewan, 118; Alberta, 124; Newfoundland, 127

Created, 9

Report, January 1950, 9

September, 1950, 10, 76

## CONSTITUTION OF CANADA

- Amending clause, requirements, 21, 23, 24, 30, 31, 37, 64
- Amending procedure, Category (4), 24, 30, 52
- Amendment, participation of provinces, 39
  - Ontario formula for, 15-17, 27, 29, 33, 48
- Compact, a, 44
- Division of, for purpose of amendment, 10, 11, 24, 52
  - Briefs submitted concerning, *see* Committee of Attorneys General
- Establishment of in Canada, 7, 12, 18, 20, 21, 22, 32, 33, 37, 38, 40, 43, 45, 47, 49, 51
- Federal character of, 7, 37, 45, 60
- Flexibility of, 35, 36
- New, establishment of as a pact, 44

## CONSTITUTIONAL CONFERENCE

- Future meeting, 63
- Procedure of, 43, 48, 49, 50, 51, 52, 53, 54
- Progress of, 8, 13-15, 19, 30, 33, 35, 60, 64
- Purpose of, 7, 15, 19, 20, 47

## DELEGATION OF POWERS, 36

DIVISION OF CONSTITUTION, for purpose of amendment, *see* Constitution, Division of

## DOUGLAS, Hon. T. C. (Premier of Saskatchewan), 32, 52, 54, 64

- Amending procedure, considerations, 64
- Category (4), procedure for, 52
- Conference, procedure of, 52, 54
  - progress of, 33, 35, 64
- Constitution, a Canadian document, 32, 33
- Delegation of powers, 36
- Entrenched clauses, 35, 36
- Flexibility, 35, 36
- Fundamental rights, 35
- Marketing, 34
- Ontario formula for amendment, 33
- Powers of federal government, 34, 35
- Price controls, 34
- Property and civil rights, 34, 35
- Provinces, lack of protection for, 36
- Social security, 34

## DUPLESSIS, Hon. MAURICE (Premier of Quebec), 5, 11, 44, 50, 53, 68

- British North America Act, amendment, 1949, 12
- Conference, procedure of, 50, 53
- Constitution, establishment in Canada of, 12, 45
  - a compact, 44
  - federal character of, 45
- Fiscal powers, 45
- Old age pensions, 46
- Property and civil rights, 44
- Provincial autonomy, 44, 45
- Social security, 44, 46

ENTRENCHED CLAUSES, *see* Amendments to the Constitution

FEDERAL CHARACTER OF CONSTITUTION, 7, 37, 45, 60

FEDERAL GOVERNMENT, powers of, 34, 35

FINANCES, provincial, 45

## FROST, Hon. LESLIE M. (Premier of Ontario), 12, 46, 58

- Amending procedure, need for, 47
- Amendment, formula for, 15-17, 48
- Conference, procedure of, 48, 49
  - progress of, 13, 14, 15
  - purpose of, 15, 47
- Constitution, a Canadian document, 47, 49
- Fundamental rights, 48
- Provinces, lack of protection for, 47

FUNDAMENTAL RIGHTS, *see* Amendments to the Constitution



- GARSON, Hon. STUART S. (Minister of Justice), 8  
 Committee of Attorneys General  
 Report, January 1950, 9  
 Report, September 1950, 10  
 Sections of B.N.A. Act, disposition of, 10, 11
- JOHNSON, Hon. BYRON I. (Premier of British Columbia), 28, 63  
 Amending procedure, need for, 28  
 Conference, future meeting, 63  
 Ontario formula for amendment, 29
- JONES, Hon. J. WALTER (Premier of Prince Edward Island), 29, 64  
 Amendment, procedure for, 30, 31  
 Category (4), procedure for, 30  
 Conference, progress of, 30  
 Prince Edward Island, communication with mainland, 29, 31, 32
- LEGISLATURES, constitution of, 11
- MACDONALD, Hon. ANGUS L. (Premier of Nova Scotia), 18, 59  
 British North America Act, character of, 60  
 Conference, progress of, 19, 60  
 Purpose of conference, 19
- McNAIR, Hon. JOHN B. (Premier of New Brunswick), 19, 50, 61  
 Amendment, formula for, 21  
 Canada, position of, 61  
 Conference, procedure of, 50  
     purpose of, 20  
 Constitution a Canadian document, 20, 21, 22  
 United Kingdom parliament, suggested legislation, 22
- MANITOBA, *see also* Campbell, Hon. Douglas L.  
 Submission to Committee of Attorneys General, 108
- MANNING, Hon. E. C. (Premier of Alberta), 36, 53, 65  
 Amendment, procedure for, 37  
     participation of provinces, 39  
 British North America Act, provisions to be repealed, 38  
 Conference, procedure of, 53  
 Constitution, characteristics of, 37  
     a Canadian document, 37, 38
- NEW BRUNSWICK, *see also* McNair, Hon. J. B.  
 Submission to Committee of Attorneys General, 107
- NEWFOUNDLAND, *see also* Smallwood, Hon. J. R.  
 Submission to Committee of Attorneys General, 127
- NOVA SCOTIA, *see also* Macdonald, Hon. Angus L.  
 Submission to Committee of Attorneys General, 100
- OLD AGE PENSIONS, 46
- ONTARIO, *see also* Frost, Hon. Leslie M.  
 Submission to Committee of Attorneys General, 92
- PARLIAMENT, composition of, 43
- PRESS, statement to, 57, 67
- PRIME MINISTER OF CANADA, addresses, *see* St-Laurent, Right Hon. L. S.
- PRINCE EDWARD ISLAND, *see also* Jones, Hon. J. Walter  
 Communication with mainland, 29, 31, 32  
 Submission to Committee of Attorneys General, 117
- PROCEDURE OF AMENDMENT, *see* Constitution, division of
- PROPERTY AND CIVIL RIGHTS, *see* Amendments to Constitution
- PROVINCES  
 Autonomy of, 44, 45  
 Lack of present protection for, 36, 47  
 Legislatures, constitution of, 11

- QUEBEC, *see also* Duplessis, Hon. Maurice  
Submission to Committee of Attorneys General, 98
- REPRESENTATIVES attending conference, list of, 75
- ST-LAURENT, Right Hon. L. S. (Prime Minister of Canada), 6, 11, 43, 50, 53, 54, 57, 67  
Committee of Attorneys General, 8  
Conference,  
    procedure of, 43, 50, 53, 54  
    progress of, 8  
    purpose of, 7  
Constitution a Canadian document, 7, 18, 43  
Federal character of the Constitution, 7  
Fundamental rights, 7  
Legislatures, provisions concerning, 11  
Parliament, composition of, 43  
Quebec Act, 1774, 6  
Statement to the press, 57, 67
- SASKATCHEWAN, *see also* Douglas, Hon. T. C.  
Submission to Committee of Attorneys General, 118
- SMALLWOOD, Hon. J. R. (Premier of Newfoundland), 39, 51, 66  
Conference, procedure of, 52  
Constitution a Canadian document, 40, 51  
Entrenched clauses, 40  
Social security, 40
- SOCIAL SECURITY, 34, 40, 44, 46
- UNITED KINGDOM, possible legislation, 22









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